UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.973
6 April 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 973rd MEETING

Held at Headquarters, New York,
on Tuesday, 4 April 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Submission of reports by States parties under article 40 of the Covenant

Action by the General Assembly at its forty-fourth session

(a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant

(b) Effective implementation of international instruments on human rights including reporting obligations under international instruments on human rights

Draft general comment relating to article 23 of the Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

90-55428 2431S (F)

/...

The meeting was called to order at 10.35 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

1. Ms. KLEIN (Secretary of the Committee) drew attention to the Secretariat note dated 20 February 1990 on submission of reports by States parties under article 40 of the Covenant. There was an omission in table I on the status of reports pending consideration by the Committee.

2. The United Kingdom, whose third periodic report had been received in 1989, should be added. It was a comprehensive report which included information on the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and all dependent Territories. It was currently being translated and reproduced.

3. In addition, she informed members that the Permanent Mission of the German Democratic Republic had sent a note to the Committee explaining that, in view of recent events in that country, the report submitted in 1988 should be disregarded. A new report would be submitted as soon as possible. The Permanent Mission of Panama had requested that consideration of Panama's second periodic report should be postponed to a later unspecified date. Although the Permanent Mission of Czechoslovakia had not yet made an official request, she felt it was safe to assume that, in view of recent developments, they also would want to send a new report to replace the third periodic report, received in 1989. Currently, therefore, there were 13 reports pending consideration by the Committee.

4. She noted that the due date indicated for the second periodic report of Zaire was 1989; however, the Committee had set that date as an extension from the original date of 1983, a first extension having been granted to 1988, and another to 1989. The third report would have been due in 1988 and the fourth would be due in 1993. The due date of 1988 for the second periodic report of Canada was also an extension from 1985. Canada had previously submitted a very comprehensive supplementary report that had been considered in 1984 by the Committee, which had therefore granted the extension. However, the third periodic report of Canada was due in April 1990.

5. Contacts had been made with the Permanent Missions of most of the countries whose reports had been due since 1988 or for a longer period. So far, it had not been possible to establish contact with the Permanent Mission of Equatorial Guinea. The contacts had been made by the Chairman and Messrs. Cooray, El-Shafei, Wako, Pocar and Ndiaye.

6. The CHAIRMAN said that the Committee had had fruitful contacts with the Permanent Missions of Austria, Bulgaria, Cyprus, the Democratic People's Republic of Korea, Egypt, Gabon, the Gambia, Guyana, Iceland, the Islamic Republic of Iran, Jamaica, Kenya, the Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, the Niger, Peru, Sri Lanka, the Sudan, Suriname, the Syrian Arab Republic, the United Republic of Tanzania, Venezuela and Yugoslavia.

(The Chairman)

7. The bureau had met that morning and now proposed the following dates for consideration of the next reports from those countries whose reports had been examined during the current session: (a) the Dominican Republic: the second periodic report had been due in April 1989, and hence the third periodic report would be due in October 1991; (b) Costa Rica: the third periodic report was due in August 1990, but the Government of Costa Rica had asked for an extension; the bureau recommended that the new date should be August 1991; (c) Saint Vincent and the Grenadines: the second periodic report had been due in February 1988; the bureau now suggested that the third periodic report should be due in October 1991; (d) Nicaragua: the third periodic report was due in June 1991; the bureau suggested that that date should be maintained.

8. If he heard no objection, he would take it that the Committee agreed to those dates.

9. It was so decided.

10. The CHAIRMAN said that the bureau wished to suggest that during its July session, the Committee should consider the following reports: Viet Nam, San Marino, Tunisia, Zaire and India, in that order. In addition, it should hold in reserve the following: Spain, Finland and Jordan.

11. Mr. PRADO VALLEJO noted that the list just suggested by the Chairman did not include any Latin American countries. Since the Committee had already postponed its consideration of the report from Panama, he wondered if that report might not be considered in July.

12. Ms. KLEIN (Secretary of the Committee) explained that the second periodic report from Panama had originally been scheduled for the current session. However, early in 1990 the Committee had received a note from the Permanent Mission of Panama requesting that consideration should be deferred to a later, unspecified date.

13. Mr. PRADO VALLEJO said that the report of Panama was extremely important in view of the difficult internal situation that country was going through. He thought it might be helpful to that country for the Committee to consider its report. He suggested that the Committee should contact the Government of Panama with a view to finding out if it might not wish to have its report considered in July. It should at least be listed among the countries to be held in reserve; there was no reason for leaving it out indefinitely.

14. The CHAIRMAN suggested that the Secretariat should contact the Permanent Mission of Panama to find out whether it would be prepared to have its report considered in July and, if not, in October. He suggested the following amended list of reports to be considered by the Committee at its July session in the order given: Viet Nam, San Marino, Tunisia, Zaire and Panama; in reserve: India, Spain, Finland and Jordan. If he heard no objection, he would take it that the Committee agreed.

15. It was so decided.

16. Ms. KLEIN (Secretary of the Committee), replying to a query by Mr. Wako concerning the status of the Czechoslovak report, explained that it had been submitted before the recent change in government. In other committees, the representative of Czechoslovakia had asked that its reports to those bodies should not be considered. It might be useful to contact the Permanent Mission of Czechoslovakia to find out its wishes with regard to the third periodic report.

17. The CHAIRMAN suggested that the Secretariat should ask the Permanent Mission of Czechoslovakia if it might wish to have its Government's report considered in October.

18. He informed the Committee that the Government of Canada had asked if it might be allowed to submit the third report, due in 1990, with a view to having the second and third reports considered together. The bureau considered that there was not much point in considering an outdated report and felt that the Committee could consider both reports in the autumn session or later. The Government of Canada had asked for instructions. He therefore suggested that the Committee should decide that Canada should submit the third report in 1990, as it was prepared to do.

19. Mrs. HIGGINS said that the co-operative attitude of the Government of Canada was highly commendable. However, she was not sure whether allowing the consideration of the two reports together might not encourage other countries which were less diligent to let one of their reports lapse.

20. The CHAIRMAN said that the reason that Canada's second periodic report was only now coming up for consideration was that the Committee had been unable to consider it before. In his view, it would set a worse precedent for the Committee to tell Canada that it should not submit its third report yet. The Canadian Government had been most co-operative, and he therefore suggested that the Committee should request it to submit its third report in 1990.

21. It was so decided.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION

(a) ANNUAL REPORT SUBMITTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 45 OF THE COVENANT

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

22. The CHAIRMAN drew attention to the report on effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (A/44/668), often referred to as the Alston report. In view of the limited time available at the current session, he suggested that the report should be studied by a working group, which should make recommendations to the Committee at its next session.

23. It was so decided.

READEX FICHE

24. The CHAIRMAN invited comments on the consideration by the General Assembly of the Committee's annual report.

25. Mr. POCAR said that major developments in international human rights norms of great interest to the Committee had taken place at the forty-fourth session of the General Assembly. In its resolution 44/128, the Assembly had adopted the text of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, as a normative complement to its article 6. States ratifying the Second Optional Protocol would thereafter include information on compliance in their periodic reports submitted under article 40 of the Covenant. Immediately upon its entry into force, it should be applied by the Committee.

26. The adoption of the Second Optional Protocol gave rise to questions of supervision. Assigning supervision of new protocols to existing human rights bodies would help to avoid proliferation of reports. Their increasing number was becoming a major problem for some States parties lacking adequate human resources or infrastructure to submit reports in a timely manner. The General Assembly had also adopted the Convention on the Rights of the Child, which presumably would have a new supervising body. Several other human rights instruments were in preparation, notably dealing with migrant workers and freedom of religion, whose supervision should be assigned to existing bodies.

27. The importance of individual communications had been emphasized more than ever. Complaints by victims had been very effective in protecting human rights. There had been many new ratifications of the first Optional Protocol in recent years, more than of the Covenant itself. The work of the Committee had been used frequently in debate as proof of violations. General Assembly resolution 44/129 had urged prompt compliance with reporting obligations. Perhaps the system of periodicity of reports could be revised, to counter the trend towards late submission of reports or non-compliance. Several States had requested postponement of examination of reports in times of internal change or upheaval, but he felt the Committee should review them on schedule. During times of upheaval, increased vigilance over human rights was especially needed.

28. General Assembly resolution 44/135 had suggested that treaty-monitoring bodies should give technical assistance to States parties to improve the reporting system in some countries where, despite the guidelines, there were difficulties in preparing reports. Perhaps the reporting manual could also be distributed more widely.

29. Mr. COORAY referred to resolution 44/129, in which the Secretary-General had been urged to give more publicity to the work of the Human Rights Committee. He asked about the status of the publication of the second volume of the Committee's Selected Decisions under the Optional Protocol covering the seventeenth to thirty-second sessions.

30. The CHAIRMAN said that in the past two years the work of the Human Rights Committee had become more widely known in judicial circles. At conferences of judges and chief justices which he and other Committee members had attended, great appreciation had been expressed for the emerging jurisprudence of the Committee's

(The Chairman)

decisions. The second volume of Selected Decisions was eagerly awaited. Judges and other members of the legal profession dealt with grass-roots application of human rights, and it was their very business to see that human rights were implemented within domestic jurisdictions.

31. He also noted that, in addressing the Committee, the Under-Secretary-General for Human Rights had referred to General Assembly resolution 44/156 and the proposed world conference on human rights. The Secretary-General had sought views on the desirability of such a conference.

32. Mr. WENNERGREN said that when a country went through a period of upheaval, it was very important to take human rights into account, and it would be useful if States approached the Committee for advice when reshaping their systems. He wondered how the Committee could best help States parties to take international law into account when they were fully occupied with internal problems and domestic law. Most States parties saw international instruments in a traditional way, whereas a modern approach would consider integration of international law and human rights instruments into domestic systems. He suggested that that approach should be more widely publicized.

33. Mrs. HIGGINS said that the Committee needed to consider at length how to monitor compliance with human rights instruments during states of emergency. It was obviously not satisfactory to deal with such situations solely in the context of the periodic reports submitted to the Committee, since they might arise at any time. A university had under consideration a project for a data base on states of emergency world-wide, which would be available to members of all treaty bodies.

34. While it was her opinion that international conferences on human rights were generally useful, she would not wish to see huge amounts of resources diverted to the proposed world conference away from the immediate needs of treaty bodies, particularly, the Human Rights Committee.

35. Mr. EL-SHAFEI said that he appreciated the information provided by the Secretariat on action taken by the General Assembly with regard to human rights bodies. He would welcome further information on any steps that had been taken in response to the relevant General Assembly resolutions, particularly those relating to funds.

36. He would welcome additional details on the study prepared by an independent expert, in response to General Assembly resolution 43/115, on possible long-term approaches to enhancing the effective operation of human rights treaty bodies. He wished also to know more about the work of the meeting of persons chairing the human rights treaty bodies.

37. The matter of the world conference on human rights must be studied carefully. A conference of that type would be worth while, providing at once a forum for discussing persistent violations of human rights and a means of applying pressure on certain régimes.

38. Mr. HOUSHMAND (Representative of the Secretary-General) said that, in its resolution 44/135, the General Assembly had reiterated its request to the Secretary-General to review the need for adequate staffing resources in regard to the various treaty bodies. In his report on that question to the Commission on Human Rights, the Secretary-General had drawn attention to the increased work-load of the various treaty bodies. In response, the Commission on Human Rights had taken a number of decisions. Pursuant to paragraph 1 of Commission on Human Rights resolution 1989/46, a task force had been appointed by the Secretary-General to prepare a study on computerizing the work of the treaty-monitoring bodies in relation to reporting procedures. In its resolution 1990/21, the Commission had endorsed the recommendations of the Task Force. In its resolution 1990/25, the Commission had requested the Secretary-General to submit to the Economic and Social Council at its first regular session of 1990 a report on the situation and developments regarding the logistical and human resources support for the increasing activities in the field of human rights of the Centre for Human Rights. Preparation of that report was currently under way.

39. In its resolution 44/135, the General Assembly had requested the Secretary-General to convene a meeting of the persons chairing the treaty bodies in 1990. That meeting should be held as early as possible.

40. Lastly, in its resolution 1990/25, the Commission on Human Rights had invited the treaty bodies to submit comments on the recommendations contained in the study on possible long-term approaches to enhancing the effective operation of human rights treaty bodies.

41. Mr. ANDO said that the Special Rapporteur appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities had submitted several reports containing data which might be relevant to the university data base just mentioned by Mrs. Higgins. He stressed the importance of issuing the second volume of Selected Decisions under the Optional Protocol and of updating the Official Records of the Human Rights Committee. While the proposed world conference on human rights was important, it should not prejudice the day-to-day activities of human rights bodies.

42. The CHAIRMAN said that the Committee had very much appreciated the statement by Mr. Pocar on issues addressed by the General Assembly which were of relevance to the treaty bodies. It took note with appreciation of the encouraging remarks of the General Assembly with respect to the Committee's work. It also welcomed the adoption by the General Assembly in its resolution 44/128 of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

43. The Committee had taken careful note of General Assembly resolution 44/129, which had emphasized the need for States parties to provide the fullest possible information during states of emergency. Aside from its standard procedure of consideration of reports on a periodic basis, the Committee had not yet developed a procedure for dealing with states of emergency. He therefore agreed with those members who wished to devote a substantive discussion to that matter.

(The Chairman)

44. He was very grateful that the General Assembly had recommended providing adequate resources to the Centre for Human Rights to assist the Human Rights Committee and other treaty bodies in their operations.

45. The Committee had also taken note of the usefulness of convening a world conference on human rights and hoped that it would produce results not only in terms of promoting human rights but also in generating additional resources. At the same time, the Committee had agreed that resources for that conference should not be allocated at the expense of regular activities of the treaty bodies.

46. The Committee was very encouraged by the efforts of the Secretariat to publicize its work by issuing the second volume of the Selected Decisions and the Official Records of the Human Rights Committee.

47. Mr. EL-SHAFEI asked the Chairman to clarify the manner in which the proposed world conference on human rights could produce additional resources - was it meant to be a pledging conference?

48. The CHAIRMAN said that he had meant that the conference might generate additional resources for the promotion and protection of human rights. That meeting was not intended to be a pledging conference.

DRAFT GENERAL COMMENT RELATING TO ARTICLE 23 OF THE COVENANT (continued)

49. The CHAIRMAN drew attention to document CCPR/C/38/CRP.1, entitled "General comment on article 23 of the Covenant".

The meeting was suspended at 12.15 p.m. and resumed at 12.40 p.m.

50. Mr. POCAR proposed the insertion of a paragraph on the reunification of families, which was an important issue to be dealt with in the context of article 23 of the Covenant. It also related to other articles, such as article 12 with regard to the right to liberty of movement.

51. Mr. WENNERGREN said that paragraph 1 of the general comment on article 23 should include a reference to article 6 (5) of the Covenant, under which persons below 18 years of age and pregnant women were protected from imposition of a sentence of death. Paragraph 3 of the general comment should include a reference to polygamy. It would be easier for the Committee to understand how States parties protected families if it understood their concept of the family. Paragraph 3 should also deal with the protection of the family by society, including the various types of assistance provided by relatives, neighbours and friends. Child care, for example, could be provided by the society rather than the State. The State could encourage societal groups through financial and other means to provide direct help to families.

52. Mr. DIMITRIJEVIĆ said that consideration could be given to the question of the protection of families in the context of criminal law and procedures. In many countries family members were not obliged to report certain crimes committed by

(Mr. Dimitrijević)

other family members or testify against them in criminal cases. That was also a form of protecting the integrity of the family. It would be advisable to draw the attention of States parties to that aspect of the question in considering periodic reports in connection with articles 14 and 15 of the Covenant.

53. Mr. EL-SHAFEI stressed the need to include a reference to traditions, which were an important factor in the daily life of families and an aspect to be considered with regard to protection of the family. Reference should be made to positive traditions which were in accordance with article 23 of the Covenant.

54. The CHAIRMAN, speaking in his personal capacity, said that the Committee might ask the States parties concerned about the practice of polygamy. In that connection, he preferred the approach referred to by Mr. El-Shafei concerning the need to take account of traditions.

55. Mr. WENNERGREN said that consideration should also be given to the question of how soon a family was informed when one of its members was arrested. That was also an aspect of protection of the family.

56. Mr. NDIAYE pointed out that it would be a mistake to consider polygamy only in terms of traditions. Polygamy was also governed by written law, such as the Shariah.

The meeting rose at 1 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.974
6 April 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 974th MEETING

Held at Headquarters, New York,
on Tuesday, 3 April 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Draft general comment relating to article 23 of the Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

90-55433 2432S (E)

/...

The meeting was called to order at 3.30 p.m.

DRAFT GENERAL COMMENT RELATING TO ARTICLE 23 OF THE COVENANT (continued) (CCPR/C/38/CRP.1)

1. Mr. ANDO said that the concept of the family contained in paragraph 2 of the draft general comment (CCPR/C/38/CRP.1) was very different from the Oriental concept of the family. In some traditional cultures, the family could comprise a unit larger than the "nuclear" family.

2. When the Committee had discussed and adopted its general comment on article 24 of the Covenant, it had interpreted that article as meaning that children born out of wedlock should be treated in the same way as children born in wedlock. In its general comment on article 23, the Committee would have to consider whether cohabitation resulted in any legal disadvantages, not only for the unmarried couple but also for children born out of wedlock.

3. The CHAIRMAN said that perhaps the Committee should distinguish between the "nuclear" family and the extended or joint family on the basis of the kind of protection that each required. In article 23, paragraph 1, the Covenant stated that the family was entitled to "protection by society and the State". He was not certain how society could protect the family.

4. The Committee should examine existing legislation on the de facto family. In his country, natural children had certain rights, including the right to be registered at birth. The Committee should consider what protection natural children had - or should have - under the law.

5. Mr. COORAY said that States parties could be asked whether their legislation contained any provisions regarding the protection of children at the time of dissolution of marriage. However, it was for the courts to determine what was best for the child.

6. With regard to the protection of the family by society, the Committee could ask States parties whether the family, as the "natural and fundamental group unit of society", was protected by any component of society, such as the Church.

7. Paragraph 4 of the draft general comment stated that, while the Covenant did not establish a specific marriageable age, that age should be such that consent could be considered as having been freely and fully given. States parties could be asked whether their law provided for a minimum marriageable age, since extreme youth and emotional immaturity were serious obstacles to free and full consent in accordance with article 23, paragraph 3, of the Covenant.

8. Finally, he stressed that the Committee should be very careful in formulating its comments regarding polygamous marriage.

9. Mr. PRADO VALLEJO said that, in Spanish, the concept of "nuclear" family had no meaning whatsoever, and the Committee would have to find another term. The Committee should first of all determine what States understood by the word "family". In the Vienna Convention on Diplomatic Relations, which had been ratified by most States, the family was considered to comprise all family members who lived in the house of a diplomat and who were dependent on the head of the household. That was a traditional concept accepted by all States, since it included family members other than the two spouses and their children.

10. In Ecuador, the de facto family had the same status as traditional families in which the spouses had been married under civil or religious law.

11. In paragraph 5 of the draft general comment, the Committee should consider what it meant by the right to found a family. In Ecuador, if an Ecuadorian married and later divorced a foreigner who obtained custody of their children, the Ecuadorian sometimes had difficulty in securing visitation rights because family unity was not respected under the law of some States. The draft general comment should therefore place greater emphasis on the obligation of States parties to promote family unity. In addition, the Committee should emphasize the equality of each spouse in managing the problems which daily confronted the family, as well as in managing family property.

12. The CHAIRMAN said that the last point made by Mr. Prado Vallejo had been touched upon when the Committee had considered various reports of States parties, and perhaps the Working Group could take a look at a number of such reports when it dealt with the issue.

13. Mr. ANDO said that the Committee should consider the question of surnames. In Japan, progressive women were resorting to all sorts of legal means in order to retain their maiden name. He wondered whether individuals had a right to use their own family name.

14. The CHAIRMAN said that a number of speakers had already commented on paragraph 5 of the draft general comment. Mr. Dimitrijevic had remarked that, as long as they were not compulsory, family planning policies should not be looked upon as endangering family rights.

15. Speaking in his personal capacity, he said that he did not see the connection between the last sentence of paragraph 5 and what preceded it. The Committee was giving priority to "freedom of conscience and religion" over other aspects of the Covenant, and perhaps it should consider redrafting the sentence in order to avoid possible misinterpretations.

16. Mr. PRADO VALLEJO said that most South American countries had adopted the Civil Code created by the Venezuelan jurist Andrés Bello. According to that Code, wives had to follow their husbands. In Ecuador, that law had been repealed, and the location of the family domicile had become a matter which required the agreement of both spouses. However, in most countries, wives and children had to live in the domicile chosen by the husband.

The meeting rose at 4.05 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.975
6 April 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 975th MEETING

Held at Headquarters, New York,
on Wednesday, 4 April 1990, at 10 a.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIĆ

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Nicaragua

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.40 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Nicaragua (CCPR/C/42/Add.8)

1. At the invitation of the Chairman, Mr. Icaza Gallard, Mr. Guerrero Mayorga and Mr. Quintana García (Nicaragua) took places at the Committee table.

2. The CHAIRMAN pointed out that the Committee had considered the initial report of Nicaragua in April 1983 and that the second periodic report had been submitted in November 1988. A notification by Nicaragua in accordance with article 4 (3) of the Covenant was contained in document CCPR/C/2/Rev.2.

3. Mr. ICAZA GALLARD (Nicaragua), introducing the second periodic report, said the report covered the period between 1983 and 1987. The changes brought about by the Sandinist popular revolution had put an end to the earlier legal and institutional order in Nicaragua. The first stage of that process had included the adoption of the Fundamental Statute, the Statute on the Rights and Guarantees of Nicaraguans, the Act on Political Parties and Their Regulation, the act establishing the Council of State, and the Electoral Act, the establishment of the National Assembly and the presidential and legislative elections of 1984. The second stage had resulted in the adoption of the new Constitution and the third stage had culminated in the recent elections held in February 1990.

4. Since the assumption of power by the Government Junta for National Reconstruction, the promotion of human rights had been of paramount importance in Nicaragua. The first laws enacted by the Government had established a system for protecting human rights. The process of building democratic institutions had been consolidated by a foreign policy that respected human rights and was open to all international bodies which monitored the promotion and protection of such rights. Nicaragua had been visited repeatedly by the Inter-American Commission on Human Rights, Amnesty International and America's Watch. As a State Member of the United Nations, it had one of the best human rights records in terms of the legal instruments that it had ratified.

5. Political pluralism, which was guaranteed under the Statute on Rights and Guarantees of Nicaraguans, the Act on Political Parties and their Regulation and the Electoral Act, had been further strengthened through the presidential and legislative elections held in 1984. Seven political parties had participated in the elections and more than 1.5 million citizens, 80 per cent of the electorate, had cast their vote. The Sandinist National Liberation Front had won approximately 70 per cent of the votes. Prominent political figures from various parts of the world had visited Nicaragua and expressed amazement that a country in the midst of a war of aggression had been able to conduct free elections for the first time in its history.

(Mr. Icaza Gallard, Nicaragua)

6. In 1980, the Revolutionary Government had established the National Commission for the Promotion and Protection of Human Rights, an independent body that investigated and rectified human rights violations. The Statute on the Rights and Guarantees of Nicaraguans had abolished the death penalty and determined that imprisonment could not exceed 30 years.

7. The adoption of the new Constitution of 1987 on the basis of consultation with the country's political parties and leaders and economic, social and cultural organizations had clearly demonstrated Nicaraguan political pluralism in action. The Constitution, which had replaced the Statute on the Rights and Guarantees of Nicaraguans, enshrined civil, political, economic, social and cultural rights. Article 46 of the Constitution provided that all persons in the national territory enjoyed unrestricted promotion and protection of human rights and the full exercise of the rights set forth in a number of international legal instruments, including the International Covenant on Civil and Political Rights.

8. Although those instruments did not have the same status as the Constitution, the rights laid down in them were part of the domestic legislation and their provisions could serve as the basis for domestic remedies. If the Constitution failed to cover a specific right, the accepted provision of international law would be applicable. On the other hand, if there was a discrepancy concerning the definition or exercise of a right or guarantee, the Constitution took precedence over international law.

9. The right to life was guaranteed under article 23 of the Constitution, which had abolished the death penalty. Nicaragua was a democratic and representative State. There was no parallel police force established by the State for the purpose of eliminating political adversaries. A specific chapter of the Constitution was devoted to the rights of the Communities of the Atlantic Coast, which were an indivisible part of the Nicaraguan people and had the same rights and obligations as all Nicaraguans. The Communities also had the right to preserve and develop their cultural identities and administer their local affairs according to their traditions. The State recognized their communal forms of land ownership and their right to the free expression and preservation of their languages, art and culture.

10. The Constitution very clearly established the separation of powers, guaranteeing a democratic and pluralistic system based on a mixed economy and non-alignment. Article 129 established the independence of the legislative, executive, judicial and electoral branches of government. Legislative power was vested in the National Assembly, whose members were elected by universal and direct suffrage on the basis of proportional representation. The President of the Republic, who was the Head of State, Head of Government and Commander-in-Chief of the Defence and Security Forces, exercised executive power. The judicial branch was composed of the Courts of Justice, the highest body of which was the Supreme Court of Justice. The electoral branch was made up of the Supreme Electoral Council and other subordinate electoral bodies. The Council consisted of five judges elected by the National Assembly.

(Mr. Icaza Gallard, Nicaragua)

11. The long process of unifying the jurisdiction of the Courts of Justice merited particular attention. It could be understood only within the framework of the dynamic revolutionary process in which economic and social transformations had led to the establishment of a new system of law. It had been necessary to establish anti-Somoza people's tribunals to judge war crimes committed by members of the former National Guard of Somoza. In January 1988, the decree which had set up those tribunals had been repealed. By February 1990 almost 4,000 former members of the Guard had been released from prison. As a result of the political agreements in August 1989 between the President of the Republic and representatives of the legally constituted political parties, the Maintenance of Order and Public Security Act had been repealed. Thus, the special penal legislation on crimes against State security had been abolished. The subsequent dissolution of the agrarian tribunals and the reform of the law on the jurisdictional functions of the police in October 1989 had completed the process of consolidating legal jurisdiction within the judicial branch.

12. Under article 187 of the new Constitution, any citizen had the right to file an appeal regarding the unconstitutionality of any law, decree or regulation that was inconsistent with what was prescribed by the Constitution. That recourse could be exercised through the new Amparo Act, which had been adopted in November 1988 and ranked with the Constitution. Recourse on the basis of unconstitutionality could be had against the body which issued the law, decree or regulation in question. The Supreme Court of Justice decided such recourse cases. In accordance with a declaration of unconstitutionality, a law was determined to be inapplicable but was not repealed.

13. Amparo could be invoked in respect of actions or omissions which violated or potentially violated the rights and guarantees established in the Constitution. It could be brought by the affected party against the official or authority who ordered the act concerned, against the person who actually carried it out, or against both. The recourse was brought before the Appeals Court, which then referred it to the Supreme Court for a final decision. If the Appeals Court refused to deal with the recourse, the affected party could resort directly to the Supreme Court. The Amparo Act of 1988 also regulated the recourse of habeas corpus, which could be brought on behalf of the affected party by any inhabitant of the Republic against the official or authority responsible for a violation of the right to personal liberty. The recourse of habeas corpus could be brought at any time, even during a state of emergency, for as long as a person was illegally deprived of his liberty or threatened with deprivation of liberty.

14. The new Emergency Act, approved on 19 October 1988, spelled out the circumstances that might give rise to a state of exception, in accordance with the principles of proportionality, temporality, notification and others. Like the Amparo Act and the Electoral Act, the Emergency Act was ranked on the same level as the Constitution. Article 186 of the Constitution listed all those individual rights and guarantees which could not be suspended under any circumstances; they were the same ones listed in the international human rights instruments. The exceptions to article 186 were dealt with in the Emergency Act.

(Mr. Icaza Gallard, Nicaragua)

15. One of the main legal developments during the period covered by the report was the adoption of the Electoral Act of 24 August 1988, which governed all electoral processes in the country. The Act had been amended on 18 April 1989 to provide for the holding of the general elections on 25 February 1990, in keeping with the Central American agreements of Tesoro Beach, El Salvador. The new law institutionalized the principle of political pluralism, one of the basic tenets of the Sandinist revolution. In addition, on 21 April 1989, the General Act on Social Communication Media had been adopted with a view to creating favourable conditions for the holding of elections in 1990. The international observers who had visited Nicaragua to verify the elections, at all stages, had had ample opportunity to become familiar with those two laws. The observers from the Organization of American States and from the United Nations had all agreed that the reforms he had just mentioned represented a positive development, inasmuch as they created a suitable legal framework, under Western democratic standards, for guaranteeing an honest and fair electoral process.

16. The postulates and principles of the revolution, as well as the legal framework established by the 1987 Constitution, had laid the groundwork for a state of law which had been tested during the elections of February 1990. With the presence of more than 2,000 observers, those elections had become the most observed electoral process in the history of democracy throughout the world, and the cleanest and most honest in the history of Nicaragua. As was well known, the outcome of the elections had been unfavourable to the party currently in power, which had obtained 40.8 per cent of the votes vis-à-vis 54.7 per cent for the Opposition National Union (UNO). The legal framework established by the Constitution and implemented over the past few years by the Government guaranteed that the transfer of power would be carried out peacefully, and demonstrated that State institutions were more important than partisan interests. The agreements recently signed by the transition committees appointed by Mrs. Violeta Barrios de Chamorro, the President-Elect, and by the Sandinist National Liberation Front would further ensure an orderly transfer of power on 25 April.

17. A key aspect of the transition would be the disarmament and demobilization of the Nicaraguan Resistance which, supported and financed by the United States, had throughout the past 10 years been the main obstacle to peace, reconciliation and democracy in Nicaragua. The recent agreements of Toncontín, Honduras, between representatives of the newly elected Government and of the Nicaraguan Resistance, which were fully supported by the current Government of President Ortega, represented an important step towards achieving a lasting peace in Nicaragua. The disarmament and demobilization of those irregular forces and the repatriation and social reintegration of their members, with the assistance of the United Nations Observer Group in Central America (ONUCA) and of the International Support and Verification Commission (CIAV) before 25 April were a prerequisite for a peaceful and orderly transition, which would mark the beginning of a new stage in the history of Nicaragua.

(Mr. Icaza Gallard, Nicaragua)

18. In that regard, on 3 April 1990, the Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, at a meeting in Montelimar, Nicaragua, had signed a declaration which included a call for the immediate demobilization of the Nicaraguan Resistance and called on ONUCA and CIAV to provide assistance in that regard. They had also decided that the weapons to be handed over to ONUCA should be destroyed in situ in the presence of representatives of other Central American Governments invited for that purpose by the Government concerned. They had also urged the Government of the United States to continue supporting and contributing to the demobilization of the Nicaraguan Resistance and to channel the funds approved for that purpose through CIAV. Finally, after declaring that the elections of 25 February had been carried out in a framework of complete liberty and honesty, the Presidents had confirmed their commitment to continue promoting respect for human rights, including the strengthening and improvement of their democratic systems.

19. He wished to point out that, within the Central American peace process, his Government had consistently respected and promoted human rights as an essential part of the consolidation of democratic processes in Central America. In that spirit, it had submitted a number of proposals aimed at setting up an international verification mechanism in the Central American area with the participation of regional and world agencies responsible for the protection of human rights.

Consitutional and legal framework within which the Covenant is implemented (articles 2(2) and (3) of the Covenant) (section I of the list of issues)

20. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Nicaragua (CCPR/C/42/Add.8), namely: (a) whether the provisions of the Covenant could be directly invoked before the courts and whether there had been any instances where that had been done and, if so, with what results; (b) whether there had been instances where any provisions of a law or decree or an administrative act had been challenged as unconstitutional on the ground that they impaired the substance of a right provided for under the Covenant and, if so, examples of such instances, bearing in mind paragraph 101 of the Nicaraguan report; (c) whether the National Commission for the Promotion and Protection of Human Rights had had occasion to investigate or denounce abuses or human rights violations, and to take corrective action in areas other than those mentioned in paragraphs 142 to 145 of the report; (d) whether any new legislation had been introduced regulating the remedies of amparo and habeas corpus and the declaration of unconstitutionality and, if so, what had been its impact on earlier legislation such as the Amparo Act of May 1980; and (e) information on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol.

21. Mr. QUINTANA GARCIA (Nicaragua), referring to section I (a), said that the provisions of the Covenant had been invoked before the courts, as, for example, in the trial of Eugene Hasenfus. He had enjoyed all guarantees and due process and had been pardoned by the Government. Another case had been that of the trial for revelation of State secrets against Mario Alegría, who had also enjoyed all

(Mr. Quintana García, Nicaragua)

guarantees and due process and had been pardoned. Likewise, the newly elected deputy Miriam Argüello had enjoyed all rights during her detention. The International Covenants that had been ratified by Nicaragua had been included under article 46 of the Constitution, and therefore ranked above ordinary law.

22. Referring to section I (b), he said that the answer was in the affirmative. For example, the law establishing the jurisdictional functions of the police had previously empowered the police to impose a penal sentence of up to two years for the sale and consumption of marijuana, based on the concept of a known truth and action taken in good faith. That law had been amended in 1989 in order to remove the penal function, which belonged to the courts of ordinary law of the judicial power, from the police, which was an administrative body. Hence, whenever a law, decree-law or decree-regulation directly or indirectly violated rights established in the Covenant, it could be challenged.

23. With regard to challenges to administrative acts, he said that such cases had also occurred, for example, in the area of agrarian reform, where the owners of idle or insufficiently developed lands had been compensated by the State more on grounds of social justice than on legal grounds. In some cases, the Government had acknowledged that it had acted wrongly. Other administrative acts that had been challenged had to do with censorship of the information media on the grounds that they had published exaggerated reports, especially in times of great tension in the nation. Those measures, which had been of short duration, had been challenged through the presentation of a recourse of amparo before the Supreme Court.

24. Mr. GUERRERO MAYORGA (Nicaragua), referring to section I (c), said that the primary purpose of the National Commission for the Promotion and Protection of Human Rights was to investigate and denounce any violation of human rights committed against anyone anywhere in the national territory. It had presented some claims to the military authorities. It had also, together with certain international and non-governmental human rights organizations, co-ordinated investigations in various parts of the country. It had made recommendations and proposed corrective measures to the competent jurisdictional agencies in the field of human rights. One of its primary tasks was also to recommend pardons and measures such as conditional liberty and parole. It was an independent body which, through its very valuable consultative opinions, was contributing to the formation of laws in the area of the promotion and protection of human rights.

25. Mr. QUINTANA GARCIA (Nicaragua), referring to section I (d) of the list of issues, said that the 1987 Constitution had established amparo and habeas corpus in various forms. In Nicaragua, amparo had constitutional standing to protect the Constitution in both principle and practice. Broad powers were conferred upon executive judges to implement the law. Stiff penalties could be imposed on any official interfering with an individual's personal freedom. Those provisions had helped to consolidate the rule of law in Nicaragua. The remedy on the grounds of unconstitutionality of law had been used only in exceptional cases. For example, when it had been invoked by the Vice-President-Elect against the media law, the Supreme Court had rejected the claim. Article 187 of the Constitution provided

(Mr. Quintana García, Nicaragua)

that the remedy might be invoked by any citizen. Other legislation protected the interests of society as a whole.

26. There was no extraordinary review procedure for the rulings of the Supreme Court. The Supreme Court did not act as a legislative power, and it neither reformed nor derogated from the laws challenged.

27. Mr. GUERRERO MAYORGA (Nicaragua), referring to section I (e), said that Nicaragua had used the services of the United Nations for training programmes for dissemination of information on human rights and field advisory services for the promotion of human rights, and had benefited from scholarships to train human rights experts. Those experts returned to their agencies and passed on their training within their areas of competence. They also drafted human rights briefs and submitted them to international conferences or seminars.

28. The Inter-American Centre for Human Rights in Costa Rica had also served as a forum for raising public awareness of human rights protection through its annual courses. Nicaragua had a National Commission for the Promotion and Protection of Human Rights made up of members from state agencies. It dealt with every aspect of implementation of the law and preparation of reports required by Nicaragua's obligations under international human rights instruments. The Commission also co-ordinated and updated information and informed the public on human rights activities.

29. Mr. PRADO VALLEJO said that the presence of the Nicaraguan delegation showed the reporting State's readiness to co-operate with the Committee despite its difficulties of recent years. The second periodic report was exemplary and could serve as a model second report for other States parties.

30. Since submission of the initial report, Nicaragua had gone through a very difficult period when foreign intervention had made democracy, peace and development impossible. It had to deal with violence promoted from outside, though carried out within, which had naturally had an adverse impact on human rights. Despite the efforts of the Government, human rights protection had gone through a crisis period. Many rights had been violated because of the activities of the Contras and the prevailing climate of violence. Nicaragua had sought political, negotiated formulas for peace in co-operation with other Central American countries. The Nicaraguan people had just exercised their right of self-determination through free and fair elections, and he paid tribute to the Government for its part in ensuring the democratic process. Never had an election been so massively observed. All members of the international community had agreed that the electoral process in Nicaragua had been exemplary.

31. He asked for information on the impact on the human rights guaranteed under the Covenant of civil war and outside intervention experienced in Nicaragua for the past decade.

32. Mr. AGUILAR URBINA said that he, too, found the second periodic report of Nicaragua exemplary, and was sure it would guide his Government in preparing its next report. Implementation of the Covenant over the past nine years, when a state of war had been imposed on the people due to foreign intervention, had been difficult. However, Nicaragua had signed the international instruments and had been complying with them to a large degree. The major indication of that compliance was the recent election, which all observers had agreed was free and fair. The Government of Costa Rica had sent a small delegation, and they had returned home with the impression that, despite their 100-year history of a democratic electoral process, they had much to learn from the way that election had been conducted. Central America was ready to begin the next century in democracy and peace if major Powers would allow it.

33. He joined the request of Mr. Prado Vallejo for information on human rights implementation in Nicaragua during the past decade. He also requested clarifications on the real status of the Covenant in Nicaraguan law. Paragraphs 8 and 101 of the report appeared contradictory. If the Covenant were indeed endorsed by the Constitution, he wondered how a conflict between a provision of the Covenant and Nicaraguan law would be resolved. He asked about the procedure for ensuring its constitutional rank and remedies available if a domestic law ran counter to international obligations.

34. He had some concern about the use of political justification for a state of emergency, as mentioned in paragraph 59. Political reasons for a state of emergency could go far beyond the law. He asked for more information on the maximum duration of states of emergency under the Constitution. The President held the power to proclaim a state of emergency, but he wondered if the legislative branch had any control if a presidential declaration was found to be invalid. He asked about the powers of the other branches of government to deal with possible excesses. Further elaboration would be welcome on paragraph 71 and the differences between states of emergency in Nicaragua and in other countries.

35. Turning to Section I.C of the report on the promotion of human rights, he would like to know how the "night-watches" mentioned in paragraph 76 could be viewed as promoting human rights. Such practices were often used for quite the opposite purpose in other countries.

36. He would welcome more information on the National Commission for the Promotion and Protection of Human Rights, discussed in paragraph 80. He wondered to what authority that Commission reported and the methods it employed. When it called for a remedy, he would like to know how the Administration responded.

37. Paragraph 97 of the report referred to popular participation in the courts. The Committee would welcome additional information on that system, in particular how it corresponded to the provisions of the Covenant concerning due process.

38. Paragraphs 113 and 114 of the report referred to the Council of State, whose membership currently represented 33 political, popular, trade-union, social and private-enterprise organizations. It was unclear whether that number was in keeping with the right of the Nicaraguan people to self-determination.

(Mr. Aguilar Urbina)

39. According to the report, a Special Constitutional Commission had been appointed in May 1985 to draft the constitution. It would be useful to have a full account of the manner by which the population was made aware of the constitutional issues under consideration. For example, only 100,000 citizens had participated in the open meetings on the draft constitution, held in 1986. On the other hand, the text had been translated into the languages of all the ethnic groups on the Atlantic coast. In that connection, he wished to know whether translations had been made of the entire set of documents used to prepare the draft constitution. Such an effort would have been a clear demonstration of the Government's willingness to comply with the provision under the Covenant relating to minorities. The reporting State should also provide information about the way in which it ensured civic education for the entire population, particularly in view of the high illiteracy rate that had existed in the country.

40. Ms. CHANET said that the recent elections in Nicaragua and the conditions under which they had been implemented had demonstrated the sincerity of the declarations made at the time of drafting the Constitution, namely that Nicaragua was moving in the direction of the rule of law. None the less, several questions remained. She wished to know the exact place in the hierarchy of Nicaraguan legislation of the rights recognized in the Covenant. How did a citizen go about employing the remedies under the Covenant? She also wished to know if the Covenant could be invoked through a constitutional remedy and if the remedy of amparo was the same as a constitutional remedy.

41. The Constitution was a mixture of general principles of constitutional law and revolutionary concepts. The latter did not seem to guarantee equal rights to the population and to ensure a balance of institutional powers. For example, the Sandinista Police referred to in paragraph 182 appeared to be a political party. She would appreciate comments from the reporting State on that matter.

42. She shared the concern of Mr. Aguilar Urbina with respect to popular participation in the courts. It would be useful to have a more detailed account of Nicaragua's experience with that procedure. Was any training offered to participants who lacked a legal background? How did such courts differ from the former "people's courts"?

43. The number of immunities granted under the Constitution was striking. The Committee would appreciate more details on the circumstances under which immunity could be granted. Recent reports in the press had indicated that some leaders enjoyed lifetime immunity. The reporting State should clarify the exact meaning of that privilege.

44. Additional information on the National Commission for the Promotion and Protection of Human Rights should be provided, including the powers vested in the Commission and actual cases brought before it. She also wished to know if interested parties could themselves appear before the Commission.

(Ms. Chanet)

45. The State party should explain the difference between a state of emergency and a state of war.

46. Mr. Dimitrijević took the Chair.

47. Mrs. HIGGINS said that the report was exemplary, conforming precisely to the Committee's guidelines. She would appreciate information on the plans to repeal Decree No. 1074, entitled "Act relating to the Maintenance of Public Order and Security, Reforms and Reorganization".

48. The large number of rights which had been derogated from under article 4 of the Covenant was both striking and disturbing and went considerably beyond what was standard, even in states of emergency. In 1982, the provisions from which the State party had derogated were so numerous that the list appeared to include article 4 itself. The list had also included article 10, which stated in paragraph 1 that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". She failed to understand how any state of emergency could entitle a State party to derogate from that article. The reporting State should also clarify the reasons for derogating from article 27.

49. The list of derogations transmitted in August 1984 to other States parties pursuant to article 4 of the Covenant had been shorter and more reasonable. However, three weeks later, a broader list had been introduced. The reporting State should clarify the circumstances which had allowed articles 10, 26 and 27 to either be placed on or be removed from its lists of derogations.

50. Owing to such derogations, there had been no guarantee of a fair trial until 1987. It was disturbing that that guarantee had been suppressed during such a long period. Lastly, in its introductory statement, the State party had indicated that a state of emergency had been declared in 1989. If that was the case, she wondered why the Committee had not been so notified.

51. Mr. COORAY said that the report of Nicaragua was comprehensive and had been drafted according to the Committee's guidelines. He welcomed the fact that the National Commission for the Promotion and Protection of Human Rights was an autonomous and impartial body. Additional details on that Commission should be provided, such as the specific legislation which secured the independence of the Commission from executive control and guaranteed the tenure of the Commission's members. Under what conditions and by what procedure were the members of the Commission removed from their posts?

52. Paragraphs 148 to 154 of the report discussed the right to amparo. Under Decree No. 1074, that right had been suspended in certain cases. However, suspension was not absolute: the Supreme Court had held that habeas corpus applied in respect of those rights which had not been suspended by the decrees governing the state of emergency. A bill on constitutional remedies which might incorporate that practice into Nicaraguan legislation was currently at the drafting stage. The

(Mr. Cooray)

Committee would appreciate additional information on the progress of that bill. He associated himself with the question raised by Mr. Aguilar Urbina with respect to the place of the Covenant within the framework of Nicaraguan legislation.

53. It would be useful to know to what extent information about the Covenant was disseminated among law-enforcement officers and among the populations of the indigenous communities of the Atlantic coast region. Were those populations aware of their rights under the Covenant? What steps had been taken to teach human rights to the schoolchildren in that region?

54. Mr. ANDO said that he was particularly impressed by the fact that the State party was attempting to retain political pluralism as a fundamental principle. He would appreciate more information on the relationship between the new Constitution and other statutes and guarantees under Nicaraguan law. In that connection, the reporting State should clarify the reason why it had based the majority of the human rights provisions referred to in the report on legislative statutes rather than on the Constitution.

55. The Constitution had two articles pertaining to the state of emergency. In one of them, the declaration of a state of emergency was delegated to ordinary law. Why had the reporting State chosen that particular method? Under article 5 of Decree No. 438, the National Commission for the Promotion and Protection of Human Rights was authorized to "implement specific remedies". The reporting State should explain the relationship of those remedies to other judicial or legislative remedies.

56. Lastly, he wished to know if the ethnic groups of the Atlantic coast were aware of their rights under the Optional Protocol.

The meeting rose at 1 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.976
9 April 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 976th MEETING

Held at Headquarters, New York,
on Wednesday, 4 April 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. COORAY (Vice-Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Nicaragua (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC-2 750, 2 United Nations Plaza.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued after the end of the session.

90-55443 2443S (E)

/...

The meeting was called to order at 3.40 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Nicaragua (continued) (CCPR/C/42/Add.8)

1. At the invitation of the Chairman, Mr. Icaza Gallard, Mr. Guerrero Mayorga and Mr. Quintana García (Nicaragua) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3) of the Covenant) (section I of the list of issues)

2. The CHAIRMAN said that the Nicaraguan delegation would answer questions held over from section I of the list of issues.

3. Mr. FODOR said that the Committee needed updated, precise information concerning article 186 of the Constitution. The lifting of the state of emergency and the restoration of the rights that had been suspended under it, as well as the results of the recent elections, had changed the situation in Nicaragua and would affect the implementation of the Covenant.

4. He wondered what the fate of the Constitution was expected to be. Drawing attention to paragraphs 124 and 125 of the report, he asked to what extent public opinion had been taken into account in drafting the Constitution. Was it acceptable to the entire population? Article 194 of the Constitution said that a partial amendment required a favourable vote by 60 per cent of the Representatives to the National Assembly. What would happen if the Constitution conflicted with the factual situation and an amendment did not have sufficient support in the National Assembly or could not be enacted for procedural reasons? In connection with article 198, what legal provisions were in opposition to the Constitution and how could they be repealed? If an individual felt that a law was unconstitutional, must he obey it until it was amended or repealed? What was the procedure for changing the Constitution?

5. Turning to articles 158 and 159 of the Constitution, he asked whether special courts and military tribunals were answerable to the judicial branch and whether they could be used in the case of the contras.

6. Mr. POCAR said that important laws had been enacted in Nicaragua to give effect to the Constitution. Nicaragua now faced the problem of making a peaceful transition from the current Government to the newly elected one and to ending the war with the contras during the transitional period. He would therefore like to have some information about the Amnesty Act. Had it actually been adopted? Was it in draft form or in preparation? What offences and what period of time did it cover? Did it cover offences other than political ones, and did it cover the rights set forth in the Covenant? What reparation would be made to the victims of offences constituting a violation of the Covenant?

(Mr. Pocar)

7. Concerning the constitutionality of laws, he wished to know how the Amparo Act applied to the lodging of complaints in the courts. What could an individual do to have a law invalidated, and at what point did a law become unconstitutional?

8. Mr. EL-SHAFEI commended Nicaragua for its objective, balanced and substantial report. Both the first and the second periodic report of Nicaragua referred to a number of laws and decrees. Paragraph 8 of the second periodic report referred to a decree issued by the Government Junta and approved by the Legislative Assembly. Were decrees normally promulgated by the Government and then submitted to the Assembly? Did the legislative branch issue decrees? Did laws go from the Executive branch to the legislative branch or vice versa?

9. Mr. MYULLERSON said that the report was comprehensive and satisfactory. He welcomed the fact that it gave information on the implementation of the Covenant and the practical difficulties encountered. Many positive changes had occurred since the adoption of the Constitution and the lifting of the state of emergency, including the release of political prisoners and the holding of fair and free elections.

10. Concerning the Amnesty Act, he wondered what considerations had prompted its adoption. What crimes did it cover? Did it cover political as well as non-political crimes? Did it cover offences committed by the contras or the Sandinista People's Army? How had public opinion responded to its adoption? Had there been any resentment because it also applied to major criminals? He also wished to know what rights might be restricted if an emergency act was introduced.

11. Mr. WENNERGREN said that the report was an exemplary one. He noted that chapter I of Title I of the Constitution enumerated rights in the form of principles and standards, but that laws were required to give them effect. He drew particular attention to article 36, which made violation of the rights it protected punishable, but noted that article 46, which protected the rights set forth in the Covenant, contained no comparable provision. He therefore wondered what measures had been taken in the Penal Code or other instruments to give effect to the provisions of the Covenant. The rights under article 7 of the Covenant, for instance, were not mentioned in the Constitution. What then was the situation in respect of rights which were covered in the Covenant but not in the Constitution?

12. Paragraphs 112 and 113 of the report referred to the Council of State; he wondered whether that body still existed since it was not mentioned in the Constitution. If it did, did it function and how did it influence legislation? Turning to article 187 of the Constitution, was there any real civic remedy in the case of a law that appeared to be unconstitutional? Could a citizen participate in the legislative process by opposing a provision he deemed unconstitutional? Did the Supreme Court act as a real constitutional court?

13. Concerning the Amnesty Act, was it a general law that would cover anyone who had committed a crime prior to its enactment, regardless of the nature of the crime, and did it provide any exceptions for the most serious crimes?

14. Mr. ICAZA GALLARD (Nicaragua) said that, regrettably, the Nicaraguan Constitution of 1987 did not contain provisions on the hierarchy of rules and laws of the various international instruments which the country had ratified, nor were there any provisions on the relation between such instruments and Nicaraguan law. Article 46 of the Constitution, which provided that every individual should enjoy in full the rights set out in various instruments of humanitarian law, including the International Covenants, must be understood in the light of article 182, which stated that any treaties which opposed or altered the provisions of the Constitution would have no value. However, since there had been no instances where a provision of a law or decree or an administrative act had been challenged as unconstitutional on the ground that it impaired the substance of a right guaranteed by the Covenant, it was difficult to say what interpretation the Supreme Court of Justice might give to those constitutional provisions. One interpretation might be that the provisions of international human rights instruments were above ordinary laws but below the Constitution, while another interpretation might be that all the provisions of international human rights instruments which were in keeping with the Nicaraguan Constitution had the same status as the provisions of the Constitution. There were sufficient grounds for applying all three constitutional remedies under the Amparo Act in cases where there was an alleged contradiction between an ordinary law and one or more of those provisions of the Covenant which were recognized by the Nicaraguan Constitution.

15. Articles 187 to 190 on the constitutionality of decisions established three remedies: declaration of unconstitutionality, amparo against acts of the Administration and habeas corpus. Any citizen could file an appeal regarding the unconstitutionality of any law, decree or regulation; however, such an appeal could be made only after the law had been adopted. A Supreme Court declaration on unconstitutionality applied only to the inapplicability of a law, or of provisions or parts of provisions of a law which were declared unconstitutional. While an appeal regarding unconstitutionality was based on questio de jure, the remedy of amparo was based on questio de facto.

16. Appeals regarding unconstitutionality could be made by any citizen, the remedy of amparo was made by the aggrieved party, and the remedy of habeas corpus could be made by the aggrieved party or by any Nicaraguan citizen. Appeals regarding unconstitutionality could be filed against any official of the body which issued the law, decree or regulation; the remedy of amparo could be used against any official or authority or his or her agent who violated, or attempted to violate, the rights and guarantees affirmed in the Constitution; and habeas corpus could be applied against any official or authority of the body or institution which violated or restricted personal freedom. A declaration of unconstitutionality applied to legislation which had been declared constitutional or unconstitutional by the Supreme Court of Justice; amparo involved only the natural or juridical person who filed the remedy and was limited to protecting persons in specific disputed cases; and habeas corpus could be used at any time, even during states of emergency, provided that the case involved the illegal deprivation, or threat of deprivation, of personal freedom. Article 62 of the Amparo Act confirmed that the remedy of habeas corpus would remain in force during states of emergency.

(Mr. Icaza Gallard, Nicaragua)

17. In accordance with Decree No. 438 of 13 June 1990, the National Commission for the Promotion and Protection of Human Rights was responsible for holding national, regional and local conferences as part of its data-collection activities and as a means of disseminating information. It was also responsible for compiling information on human rights and on laws and judicial decisions relating to such rights, and for disseminating such information through the use of appropriate and impartial mass media services. The Commission promoted awareness of and respect for human rights and helped individuals protect their own rights. It mobilized public opinion in cases of blatant and mass violations of human rights, such as apartheid, racism, genocide and torture. In order to facilitate its task of educating the public about human rights, the Commission had joined in the campaign to eradicate illiteracy. It co-operated with educational institutions, trade unions and other relevant institutions, including the mass media, when such co-operation could facilitate the promotion of human rights.

18. The Commission played a prominent role in carrying out educational programmes devoted to human rights and ensured that human rights education was included in the curricula of all official educational institutions, as well as in non-academic education. It had recently submitted to the executive branch a bill which would make human rights education compulsory in all educational institutions. The executive branch had not yet submitted that bill to the National Assembly, however, and it would be up to the new Government to continue the process.

19. The Commission had a permanent office in Managua and regional offices throughout the country. Its offices were open to the public. The Commission's publication of periodicals in English met the needs of Nicaragua's English-speaking minorities. The Commission regularly held seminars, particularly in military courts. It held annual seminars for military prosecutors, who had the task of investigating alleged human rights violations in combat zones.

20. The Commission ensured the protection of Indians and other national minorities - ethnic and linguistic - and also of immigrant workers and their families.

21. As a result of the state of war, which had devastated the national economy, the Commission had had scant material resources at its disposal and had not been able to carry out its work to the full.

22. Mr. GUERRERO MAYORGA (Nicaragua) said that Nicaragua was a small country which was endeavouring to exercise its right to self-determination and to consolidate a state of law. However, it had had to contend with aggression by the world's largest super-Power. The state of war, which had resulted in more than 50,000 casualties and $17 billion in economic losses, had made it difficult for Nicaragua to ensure that its citizens enjoyed all the rights set forth in the Covenant.

(Mr. Guerrero Mayorga, Nicaragua)

23. The legitimacy of Nicaragua's various declarations of a state of emergency under the prevailing circumstances had been attested to by such prestigious international bodies as the Inter-American Commission on Human Rights and Americas Watch. The domestic legislation justifying such declarations was discussed in the report (paras. 53-71 and 160-167). Article 185 of the Nicaraguan Constitution entitled the President of the Republic to suspend, within part or all of the national territory, the rights and guarantees consecrated in the Constitution in case of war or when demanded by the security of the nation, economic conditions or a national catastrophe, thus putting a state of emergency into effect for a specific and renewable period.

24. The feature that distinguished the states of emergency in Nicaragua from those in other Latin American countries was the nature of the conflict that had led to their declaration, namely, aggression against the State by armed irregular bands financed by a super-Power in violation of peremptory principles of ordinary law as well as principles of international law. Because of that continuing aggression, the latest state of emergency, however, had been repeatedly extended since 1982. The Government had recently decided, however, in the interests of the overall peace of Central America, to lift the state of emergency even though its cause had not been removed.

25. Those rights that could not be suspended under any circumstances were enumerated in article 186 of the Constitution, which, it should be noted, not only conformed fully to article 6 of the Covenant but in some of its provisions went beyond the Covenant. Furthermore, while some of the states of emergency had warranted the suspension of certain rights and guarantees, the suspension had not been applied in practice. In all cases the Government had, as required by the Covenant and by the rules of the Organization of American States, given due notification of all actions taken in connection with the declarations of a state of emergency.

26. The modalities for imposing and lifting states of emergency were regulated not only by articles 185 and 186 of the Constitution but also by a constitutional act, the Emergency Act of 19 October 1988, article 2 of which established that the President, in case of war or when demanded by national security, economic conditions or a national catastrophe, could suspend within part or all of the territory the rights and guarantees set forth in the Constitution, except for those established in the articles enumerated in article 186 of the Constitution. The Emergency Act, which was fully in keeping with article 4 of the Covenant, provided for a number of remedies, such as amparo and habeas corpus, to protect the rights and guarantees not suspended by emergency decrees. It also provided for the remedy of review, by which an individual could apply for the review of an administrative act by an executive authority that had violated one of the rights in question. Such a review must be carried out by the official's immediate superior within a time-limit of six days. Nicaragua did not yet have the remedy of judicial review by the Supreme Court of legal acts other than administrative acts.

(Mr. Guerrero Mayorga, Nicaragua)

27. The efficacy of the remedies safeguarding human rights was greatly enhanced by the activities of the National Commission for the Promotion and Protection of Human Rights (paras. 80 and 138-145 of the report). Decree No. 438 had stipulated that the membership of the Commission should reflect the broadest possible spectrum of the population, including members of religious organizations, young people, women, trade unions, the various professions and so on. It was composed of 10 impartial experts who, although appointed by the Government, enjoyed an autonomy similar to that of the Supreme Court.

28. As to its functions, the Commission submitted periodic human rights reports to the Government on the results of its investigations and on corrective steps it had taken. It had the power to investigate human rights violations and to correct administrative acts affecting human rights. It could apply for judicial remedies in the courts and issue writs of habeas corpus in connection with acts affecting an individual's physical integrity. It could also ask for a forensic medical opinion on the health of a prisoner or, for instance, demand that a prisoner not be transferred without a written order.

29. Mr. QUINTANA GARCIA (Nicaragua) said that there was no legislative control over the declaration of a state of emergency because it was an exceptional situation amply governed by constitutional law.

30. The only experience in Nicaragua with popular participation in the courts had been the Anti-Somoza People's Tribunals established in 1983 (paras. 253 et seq. of the report) and subsequently abolished by Decree No. 296 of 20 January 1988 which, pursuant to the 1988 Central American accords, had also repealed the Maintenance of Order and Public Security Act (Decree No. 1074 of 1982). It should also be mentioned that Nicaraguan law permitted persons who were not judges but who were known for their impartiality and knowledge of the law to preside over cases in the ordinary courts involving less than two-year sentences. The tribunals had been collegial courts composed of one lawyer and two laymen. Upon their abolition, all pending cases had been transferred to the ordinary courts. Accused former members of the National Guard and contras who had been remanded in custody had been amnestied - 1,190 in all - by an order of 9 February 1990.

31. Regarding the 1990 Amnesty Act, the kind of offences it covered and its similarity to Argentina's recent Full Stop Act (Ley de Punto Final), he did not know how it compared with the legislation of other countries but he could say that the framework for its promulgation in Nicaragua had been the confrontation between a national army and an irregular armed force financed by a super-Power. The recent Toncontín Agreement between the President-elect of Nicaragua and the rebel army had provided for the demobilization of the contras in order to avoid what would otherwise have become a civil war. The 1990 Amnesty Act, again in the interests of national reconciliation, granted amnesty to a very broad range of offenders. Article 1 amnestied all Nicaraguans, whether residents or not, who had committed offences against the public policy and the internal and external security of the State, or related offences; and article 2 amnestied civilians or military personnel who had committed offences while investigating the offences referred to in article 1.

32. Mr. AGUILAR asked whether an emergency decree found to be contrary to a human rights instrument would be declared unconstitutional. Details should be provided on the procedure for seeking a ruling from the Supreme Court.

33. Mr. ICAZA GALLARD (Nicaragua) said that whenever the President declared a state of emergency, the National Assembly must be informed, but that it had no legislative control in the matter. As Mr. Guerrero Mayorga had indicated, the Nicaraguan Constitution afforded greater protection against the suspension of rights during a state of emergency, than did article 4 of the Covenant. As those constitutional provisions would always be incorporated in any emergency decree, a situation in which rights were suspended would not be likely to occur. In reply to Mr. Aguilar's second question, questions of constitutionality were referred directly to the Supreme Court. Under the Amparo Act, a Supreme Court decision would not repeal the law but rather would render it inapplicable. The Court's decision would have the force of res judicata.

34. Mr. MYULLERSON requested more information on the purely legal aspects of the Amnesty Act, in particular on the categories of offences - criminal, political, etc. - it covered. It would be useful to know how the Act provided for reparation or the institution of civil proceedings in connection with psychological or physical injury suffered as a result of those offences.

35. Mr. POCAR asked whether the Amnesty Act also covered offences which would constitute a violation of the Covenant and, if so, how the victims of such violations were compensated.

36. Mr. WENNERGREN asked whether, under what had been described as a very broad Amnesty Act, extremely serious crimes, such as murder or brutal torture, would be pardoned.

37. Mr. ICAZA GALLARD (Nicaragua) said that the Committee members' concerns were understandable, but that they should bear in mind the socio-political context in which the Act had been framed. The Amnesty Act pre-dated the Tela agreements concluded by the Central American Presidents, which established procedures for demobilizing members of the Nicaraguan Resistance and guaranteed their peaceful reintegration into civilian life. Under the agreements, members of the Nicaraguan Resistance who laid down their arms would not be prosecuted for past crimes of a political or military nature. In a society which had been deeply polarized by an eight-year war fomented from the outside, national peace and reconciliation were essential to the rebuilding of a shattered economy. Those higher considerations, which took precedence over legal technicalities, had led the Sandinista Government to pardon former members of Somoza's National Guard, prisoners sentenced for crimes against public policy and members of the Nicaraguan military who had committed crimes in time of war and conflict. Moreover, human rights violations could not always be determined with certainty in a situation of war. Provision was indeed made for compensation of the families of victims of human rights violations, consistent with the civil and administrative liability stipulated in the Act.

38. Mr. Cooray, Vice-Chairman, took the Chair.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section II of the list of issues)

39. Mr. QUINTANA GARCIA (Nicaragua), referring to section II (a) on the effectiveness of programmes to promote full equality between men and women, said that the Nicaraguan Government had implemented measures designed to integrate men and women into productive life on an equal footing. Women participated in agricultural co-operatives, factories, metallurgy, telecommunications and aeronautics, and the health professions employed more women than men. Classes were co-educational in 90 per cent of primary and secondary schools. Child Development Centres (para. 158 of the report) did not discriminate in any way on grounds of sex. Women were eligible for public office, a right for which the women's organization Asociación de Mujeres Nicaragüenses Amanda Luisa Espinosa had campaigned. Married women in Nicaragua were guaranteed independence in matters of nationality, pursuant to Decree No. 867 of November 1981.

40. Referring to section II (b) on the treatment of aliens, he said that article 27 of the 1987 Constitution guaranteed aliens the same rights as nationals, subject to certain restrictions stipulated in domestic public law. Aliens could not hold public office (articles 134, 152 and 161 of the Constitution).

41. Mr. FODOR asked why the general term "workers" was used throughout Chapter V of Title IV of the Constitution, on labour rights, except in article 86, which referred to the rights of "all Nicaraguans". While it seemed reasonable that restrictions should be imposed on certain categories of non-nationals, such as tourists or temporary residents, in the light of article 86 he wished to know whether non-nationals permanently resident in Nicaragua were subject to restrictions on their choice of profession and place of work.

42. Mr. QUINTANA GARCIA (Nicaragua) said that aliens enjoyed the same rights as nationals in that respect and were barred only from holding public office.

Right to life (article 6 of the Covenant) (section III of the list of issues)

43. Mr. QUINTANA GARCIA (Nicaragua), referring to section III (a) of the list of issues concerning the use of firearms by the police and security forces, said that the right to life was enshrined as a supreme right in chapter I of Title IV of the Nicaraguan Constitution on Rights, Duties and Guarantees of the Nicaraguan People. Article 23 said that there was no death penalty in Nicaragua. The Provisional Law on Military Offences contained regulations governing the use, possession and control of firearms by the armed forces and the Police Code contained regulations concerning the use of firearms by civilians.

44. Referring to section III (b) concerning alleged disappearances attributed to the police or the security forces, he said that there had been instances of disappearances, predominantly in war zones. For example, when people had joined the contras without their families' knowledge, families had reported them as missing to the Nicaraguan authorities and international organizations.

(Mr. Quintana Garcia, Nicaragua)

Disappearances had also occurred as a result of the fighting between the Sandinista People's Army and the contras. Unfortunately: innocent people had sometimes lost their lives and at times, it had been difficult to determine who had actually disappeared.

45. Referring to section III (c) on health care and how the infant mortality rate among ethnic groups compared with that for the total population, he said that extensive immunization campaigns against polio, smallpox and measles had been organized with the support of grass-roots and international organizations. Aerial and ground-level fumigation operations had been carried out in an effort to combat malaria. The Government also made every effort to ensure that milk was provided to schoolchildren and, with considerable assistance from grass-roots organizations, had conducted door-to-door surveys to monitor the population's health situation. Other health services provided by the Nicaraguan Government included rehydration programmes for diarrhoeal disease control, also implemented with grass-roots support, and specialized children's hospitals staffed by pediatric specialists.

46. The same health care services were available, without discrimination, to Nicaragua's ethnic population. It had been difficult to reach those populations, however, because they lived in remote areas and because some of their traditions made them suspicious of scientific advances in health care.

The meeting rose at 6.10 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.977
9 April 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 977th MEETING

Held at Headquarters, New York,
on Thursday, 5 April 1990, at 10 a.m.

Chairman: Mr. COORAY
(Vice-Chairman)

later: Mr. LALLAH
(Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Nicaragua (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued after the end of the session.

In the absence of the Chairman, Mr. Cooray, Vice-Chairman, took the Chair.

The meeting was called to order at 10.35 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE CONVENANT (continued)

Second periodic report of Nicaragua (continued) (CCPR/C/42/Add.8)

1. At the invitation of the Chairman, Mr. Icaza Gallard, Mr. Guerrero Mayorga and Mr. Quintana García (Nicaragua) took places at the Committee table.

2. Mr. QUINTANA GARCIA (Nicaragua), responding to questions raised at the 975th and 976th meetings, said that the term "Sandinist" was based on the name of the defender of Nicaragua's national sovereignty. It was within that nationalistic and historical context that the subsequent use of the term, in reference to both the Sandinist police and the defence forces, had to be understood.

3. Article 7 of the Covenant stated that "no one shall be subjected without his free consent to medical or scientific experimentation". That guarantee was embodied in his country's Constitution and its Penal Code.

4. The Council of State had been replaced by the National Assembly, which was mandated to draft laws and adopt them at its regular sessions, in accordance with article 138 of the Constitution. Decrees were proclaimed by the executive branch, which had the power to draft legislation when the National Assembly was not in session.

5. Amendments to or total revision of the Constitution, provided for in articles 191 to 194 of the Constitution, required a two-thirds majority in the National Assembly. Under article 196, the Constitution invalidated all other laws inconsistent with it, and under article 198, all aspects of the existing legal order not inconsistent with the Constitution remained in effect.

6. Presidents and vice-presidents of Nicaragua who had served a term of office after the 1984 elections benefited from the privilege of life-time immunity. At the same time, Nicaraguan legislation provided for a procedure whereby immunity could be suspended. Once immunity was suspended, the individual could be tried before a regular court of law.

7. A question had been raised with respect to the statistics on war victims. According to the latest data, the number of war fatalities was estimated at 50,000 including contras, military personnel and civilians.

Treatment of prisoners and other detainees (articles 7 and 10 of the Covenant) (section IV of the list of issues)

8. Mr. QUINTANA GARCIA (Nicaragua) said that the national penitentiary system regulated the treatment of prisoners and other detainees and was under the control of the Ministry of the Interior. Statistics were collected on the treatment and classification of prisoners. Physical or mental torture could not be justified under any circumstances; the dignity and integrity of the person were guaranteed under the Constitution. The procedure applicable to cases of military offences was that set forth in the Organizational Act for the Military Courts and Criminal Procedure.

9. The procedure for investigating reports of officials or authorities who had violated the rights provided for under article 7 of the Covenant was set forth in the Amparo Act of 1980. Abuses by military authorities were handled under the military/penal legislation. In the interests of national reconciliation, pardons had been granted to counter-revolutionaries, National Guard personnel and members of the Sandanist forces who had been convicted of military offences.

10. Amnesty International had confirmed the use of the so-called "chiquitas" in Nicaragua, and in 1989 the system had been eliminated. Solitary confinement was treated under the Amparo Act. On the basis of reports in 1989 of secret prisons, the International Red Cross had visited the alleged sites but had found no such prisons.

11. There were no political prisoners in Nicaragua. Those who had been detained for crimes endangering State security had been pardoned during the electoral process, in order to create a climate of peace.

12. Mrs. HIGGINS said she understood that no lists had been provided of individuals taken prisoner during the internal armed conflict and that that was a source of great concern to their families. The Committee would appreciate further information about the alleged failure to identify prisoners of war.

13. Although the 1988 Amparo Act provided for the investigation of denunciations of public authorities, that provision was apparently not being implemented. Was that the case and, if so, why was the law not being applied?

14. Mr. AGUILAR URBINA said that he wished to know whether the protection under international treaties which pertained to prisoners of war applied to that type of prisoner in Nicaragua. The reporting State should be more precise in its definition of political prisoners and political crimes.

15. Mr. WENNERGREN said that paragraph 197 of the report indicated that the first stage of the prisoner-rehabilitation régime was adaptation. It was widely acknowledged that certain prisoners would never be responsive to any treatment. He therefore wondered how such prisoners were handled. He would also appreciate more

(Mr. Wennergren)

information on how decisions were made with regard to transferring prisoners from one rehabilitation stage to the next.

16. Mr. Lallah took the Chair.

17. Mr. QUINTANA GARCIA (Nicaragua) said that individuals taken prisoner during the period of armed conflict had first been transferred to regional prisons and then, depending on the particular situation, to prisons administered by the national prison system. Every stage of the transfers had been carefully monitored by a number of international organizations. In addition, the International Red Cross had carried out a survey of the number of prisoners in the national and regional penitentiaries.

18. The 1980 Amparo Act provided clear penalties for those authorities who failed to carry out its provisions. The remedy of amparo was being used and, in most cases, the court rulings in those cases were enforced. Nicaragua had been moving progressively towards the rule of law and was achieving results.

19. There were no political prisoners in his country. Moreover, the law relating to the maintenance of public order and security had been repealed. The constitutional rights of persons involved in political or partisan activities were guaranteed. At the same time, the State could prosecute those who engaged in guerrilla or counter-revolutionary activities or sabotage directed against it. Such individuals had been tried before the anti-Somoza people's tribunals in the past; since the abolition of those tribunals, they had been processed through the regular criminal-justice system. The State did not consider such individuals to be political prisoners.

20. The determination of when a prisoner was rehabilitated and ready to be transferred to another treatment régime was made by a team of psychologists and sociologists working directly with the prison population. The National Commission for the Promotion and Protection of Human Rights and the judicial system could also make recommendations in that regard.

21. A special feature of the prison system was a unique experiment based on open gaols. Under that system, detainees were free to work in public areas and to spend weekends with their families. Owing to the careful assignment of prisoners to the various prison régimes, the prisoners chosen for the experimental system rarely tried to escape.

Liberty and security of the person (article 9 of the Covenant) (section V of the list of issues)

22. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Nicaragua, namely: (a) how soon after arrest a person could contact a lawyer; (b) the maximum period of pre-trial detention and provisions governing release pending trial; (c) information on detention in institutions other than prisons and for reasons other than crimes (for example, in psychiatric

(The Chairman)

institutions); and (d) how compensation could be obtained in the absence of a specific provision for compensating victims of unlawful arrest or detention or persons wrongfully convicted or imprisoned.

23. Mr. QUINTANA GARCIA (Nicaragua), referring to section V (a), quoted article 34 (4) and (5) of the Constitution, and said that the Sandinist Police Jurisdiction Act (para. 182 of the report) provided that an accused person must be allowed to contact a lawyer within 72 hours. There had been a number of abuses, however, where accused persons had not been permitted to contact a lawyer. Those difficulties had been overcome through the remedy of amparo and stepped-up training of the members of the police and armed forces in law enforcement and legal procedures.

24. Referring to section V (b), he said that under the Sandinist Police Jurisdiction Act, after a maximum period of five days following the arrest of the accused, the police examining magistrate must, within 24 hours, evaluate the facts of the case and either order the immediate release of the accused person or refer the case to the Government Attorney or the corresponding law court. The Government Attorney then had three days in which to examine the case and decide to release the accused or institute proceedings. The maximum period of pre-trial detention, therefore, was nine days.

25. Provisions governing release pending trial were set forth in the act on amparo and the Sandinist Police Jurisdiction Act. Under the latter law, the police examining magistrate might release an accused person on his own cognizance or on bail. In cases involving minor offences the accused was released without bail and awaited trial at home.

26. Turning to section V (c), he pointed out that pregnant women, mentally ill persons and persons with chronic illnesses or infectious diseases were placed in institutions other than prisons in accordance with the Code of Criminal Procedure. A report by a forensic physician or two doctors was necessary for that to be done.

27. With respect to section V (d), he said that the Government respected the right to compensation for unlawful arrest or wrongful imprisonment. Although there was no such specific provision, the legal procedures for compensating victims of human rights violations could be used for that purpose.

28. Mr. FODOR, referring to article 8 (1) of the Statute on the Rights and Guarantees of Nicaraguans (para. 181 of the report), requested an explanation of the phrase "authorities expressly empowered by law". Likewise, the reporting State should define the phrase "all authorities" in article 83 of the Code of Criminal Procedure (para. 182 of the report). He wished to know whether there were judicial police or military or administrative authorities that were empowered to detain persons if proceedings were instituted ex officio.

(Mr. Fodor)

29. The State party should explain the judicial authority of the police under the Sandinist Police Jurisdiction Act and how the authority to imprison persons had been divided between the police and the judicial branch before the amendment of the Act.

30. Mrs. HIGGINS, referring to section V (d) of the list of issues, said that there seemed to be a contradiction between the Constitution, which required that detainees should be brought before a competent authority within 72 hours, and the procedures under the Sandinist Police Jurisdiction Act whereby police could detain suspects for 24 hours and must release them unless a formal investigation was ordered by a police magistrate. If an investigation was ordered, the police had a further six days to complete the investigation before either releasing the suspect, referring the case to the Government Attorney, or passing sentence themselves without any judicial hearing. Under the recent reform of the Code of Criminal Procedure, the Government Attorney had a further three days to decide whether to bring the case before a court. It therefore seemed that the detainee could be held for up to 10 days before he was brought before a court of law, which would not be in accordance with article 9 (3) of the Covenant.

31. Lastly, she inquired whether there was any provision for the judicial review of decisions to place mentally ill persons in institutions. Such a review procedure was required under article 9 (4) of the Covenant.

32. Mr. WENNERGREN said that it was his understanding that a person who had been arrested had to be brought within five days after his arrest before the police examining magistrate, who then decided to release the accused or bring him before a court. He wished to know whether the police examining magistrate was authorized to exercise judicial power in that regard. The waiting period of five days seemed excessive in the context of article 9 (3) of the Covenant. The reporting State should also provide information on legislation governing preventive detention. For example, if a person was placed under preventive detention for disturbing public order, when would he be brought before a court and who would decide about his release?

33. Mr. QUINTANA GARCIA (Nicaragua) said that within five days after the arrest of an accused person the police examining magistrate had 24 hours to evaluate the facts and decide to release the accused immediately or refer the case to the Government Attorney for further consideration. The Government Attorney had three days to decide on the merits of the case and order the release of the accused or refer the case to the appropriate court. That guaranteed a more in-depth legal analysis of the case before referral to a court. Before the Sandinist Police Jurisdiction Act had been amended, the police had had the authority to impose, through administrative channels, a penalty of up to two years' imprisonment for such offences as trafficking in marijuana. That provision of the Act had been repealed and the police could no longer impose such penalties.

34. The procedure for transferring an accused person to an institution other than a prison was governed by the Code of Criminal Procedure. On the basis of a medical

(Mr. Quintana García, Nicaragua)

report, a judge decided whether the person in question should be imprisoned or transferred to another type of institution.

35. Under Nicaraguan penal legislation, any citizen who caught a person committing an offence could detain that person and transfer him immediately to the custody of the police. Otherwise, the administrative body investigating an offence ordered the detention of the person or persons suspected of committing it. The police authorities played an administrative and investigatory role conducting investigations and examining relevant documents so that cases could be referred when necessary to the Government Attorney. Under Nicaraguan penal procedure, certain offences were exclusively penal in nature and were referred directly to the Government Attorney. Other offences were subject to lesser penalties and were referred directly to the appropriate judicial body.

36. The Sandinist Police Jurisdiction Act provided for preventive detention for certain offences. The law established a period in which the police had to examine the case and decide to release the accused or impose preventive detention. For a misdemeanour such as disturbing public order, preventive detention could be imposed for a period of one day to six months.

Right to a fair trial (article 14 of the Covenant) (section VI of the list of issues)

37. THE CHAIRMAN read out section VI of the list of issues concerning the second periodic report of Nicaragua (CCPR/C/42/Add.8), namely: (a) guarantees for the independence and impartiality of the judiciary; (b) information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary; (c) clarification of the jurisdictional differences among ordinary clerks, anti-Somoza people's tribunals and military courts; (d) examples of cases that had been assigned to the anti-Somoza people's tribunals under Decree No. 1074, articles 1 and 2, and comments on the continuing necessity of resort to the anti-Somoza people's tribunals and on the number of cases currently handled by them; and (e) information concerning the organization and functioning of the Bar in Nicaragua and on the availability of legal assistance to criminal defendants.

38. Mr. QUINTANA GARCIA (Nicaragua), referring to section VI (a), quoted articles 129 and 165 of the Constitution. Referring to section VI (b), he said that the judges of the Supreme Court were elected from lists which the executive submitted to the National Assembly. They served six-year terms, could be removed only for reasons established by the law, and enjoyed immunity. The security of tenure of judges of lower courts was ensured by the procedure whereby their performance was evaluated by judicial inspectors, who reported to the Supreme Court; they could be dismissed only for unsatisfactory performance. The judicial branch fell within the scope of the law governing the civil service.

39. With regard to section VI (c), he again referred to article 165 of the Constitution. The anti-Somoza people's tribunals had been in operation between 1984 and 1988. They had been dissolved by a decree issued in January 1988 pursuant

(Mr. Quintana García, Nicaragua)

to the agreements reached by the Presidents of Central America and also as part of a government effort to unify the court system. All the cases pending before the anti-Somoza people's tribunals had been transferred to the ordinary courts. The tribunals had been created as special courts to judge violations of the peace and security of the State. The military courts dealt only with military personnel or, in exceptional cases, with civilians involved in crimes of a military nature. Persons who had been judged by a military court could appeal to the Supreme Court.

40. Referring to section VI (e), he said that in Nicaragua there was no organization of lawyers or professional group that performed the functions of a bar association. The activities of lawyers were regulated by the Supreme Court.

41. Mr. WAKO said he would like to know what was meant, in paragraph 252 of the report, in connection with the means of obtaining compensation, by the term "normal procedures". With regard to Supreme Court judges, he wondered how their security of tenure and independence could be assured if they were elected for terms of only six years. He wondered whether each time a new President was elected, he or she would put forward new names for members of the Supreme Court. He would like to know whether there were certain objective criteria that every President must adhere to in preparing the list of candidates for the Supreme Court. He would also like to know whether the lawyers had some code of ethics and who set the standards for their professional activities.

42. He noted that the report referred to deficiencies in the Code of Criminal Procedure, and even stated, in paragraph 225, that it was antiquated. He would like to know in what specific ways the Code was antiquated. Paragraph 261 of the report referred to the right of a defendant to have a court-appointed counsel. He wondered whether the defendant had any say in the appointment of such counsel, and if the defendant could appoint his own counsel if he wanted to. He would like to know how the system actually operated.

43. Mr. MAVROMMATIS said that he, too, would appreciate some clarification regarding the protection of the judiciary, which was a corner-stone of human rights. It seemed to him that the independence of the judiciary was jeopardized by the fact that judges were elected by a political body and were appointed for the short term of six years. He asked whether the President, in preparing the list of candidates, sought the advice of a professional body, of existing judges or of other experts. He would also like to know whether the immunity enjoyed by judges applied to both civil and criminal cases, and whether it extended to judges of lower courts. He would appreciate more information on the method of appointing judges of lower courts, the length of their tenure, and the procedures for promotion, transfer or removal of all judges. He would like to know how military judges were appointed and what their conditions of service were.

44. Mr. MYULLERSON, stressing the importance of an impartial judiciary, asked whether some judges might belong to political parties and, if so, whether they suspended their membership in their party during their tenure as judges. Like Mr. Wako, he also would appreciate clarification of the meaning of the term "normal procedures" in paragraph 252 of the report.

45. Mrs. HIGGINS said it seemed to her that the police court system failed to provide for fair and independent trial. She noted with satisfaction that the police were no longer allowed to punish with penalties; however, the Committee was concerned with the entire period covered by the report, and she noted that misdemeanours and minor criminal offences had been dealt with without judicial hearing and that police could sentence for up to two years. Various non-governmental organizations had informed the Committee that those powers had in the past been used to imprison opposition activists for up to six months at a time. It was disturbing to note that Decree No. 559, while allowing permission to consult a lawyer, stated that lawyers were not permitted to obstruct an investigation. She would appreciate some comment on the compatibility of that provision with article 14 of the Covenant.

46. Mr. PRADO VALLEJO requested more information regarding military courts. He understood that they were ordinary courts, but wished to know if there were any special tribunals and if so, their number and composition. He requested information on the length of terms of office, and the requirements for membership in military tribunals, and the term of office for military judges. He wished to know how the independence of those tribunals was maintained. Since civilians could be judged by military courts when the offence was of a military nature, the question arose whether some contras had been judged by military or ordinary courts.

47. Mr. EL-SHAFEI said he understood that special courts had been dissolved and ordinary courts had been empowered to try the cases that would have fallen under their jurisdiction. He wondered if the review of the judgements handed down by special courts was under the jurisdiction of the National Commission for the Promotion and Protection of Human Rights, and if the new legislative assembly took on the functions of the Council of State for review of decisions of ordinary courts.

48. Mr. QUINTANA GARCIA (Nicaragua) said that the only existing form of compensation was that provided under the Civil Code, where victims of human rights violations could sue for damages.

49. The Constitution provided for a minimum of seven judges on the Supreme Court, but that number could be further expanded if the President-elect wished to add members, following the appropriate constitutional procedures. Whether or not they were members of her party was a personal decision, as no law prohibited such appointments. The National Assembly confirmed a slate of candidates submitted by the President, and judges could be re-elected. As to whether judges could act along party lines, that, too, was a very personal decision. It was a question of the judge's own honesty, moral integrity and compliance with law. He believed that independence of the judiciary had actually been strengthened in recent years through a process of unifying jurisdiction: laws had been gradually amended, outdated decrees had been repealed, and the functions of dissolved bodies such as the Sandinist police, the housing court and the agrarian courts had been given to the judicial branch.

50. It was the task of the Supreme Court to oversee the legal profession and impose any sanctions against its members. Although professional associations existed, none had competence under the law to regulate the legal profession.

(Mr. Quintana García, Nicaragua)

51. The existing Penal Code and Criminal Code were outdated and not in keeping with changes in the national and international situation. Some amendments had been introduced and some new criminal laws passed to deal with the current needs of society. Other laws had been repealed as being counter to the best interests of society and democracy.

52. A defendant had the right to choose counsel, and if he could not do so or could not afford legal advice, an ex officio counsel would be appointed, either at the beginning of the process when the defendant was under police detention, or later, by the court.

53. Mr. MAVROMMATIS had asked whether the President consulted judges when making up a slate of candidates for judgeships to submit to the National Assembly. Consultation was not mandatory but, in practice, the President consulted members of the legal profession, various political parties and other government bodies.

54. Only judges of the Supreme Court and the Appeals Court had immunity. The law provided procedures for removing judges from office. Appeals Court judges were elected by the Supreme Court.

55. Decisions of the military courts could be appealed, and the Supreme Court had the final jurisdiction.

56. To ensure their impartiality, judges were prohibited from holding any party affiliation or from any participation in a political party while in office. No laws had yet been established to meet the requirements for compensation, which were addressed exclusively by the judiciary.

57. In response to the question by Mrs. Higgins on whether lawyers could interrupt legal proceedings, it was not a matter of depriving the defendant of counsel. However, the defence counsel should not hinder a police investigation. An accused person should be provided with counsel immediately upon arrest, and that counsel could work with the police to clarify the legal situation.

58. In answer to Mr. Prado Vallejo, there were no special military courts. Ordinary courts were governed by ordinary law, whereas military courts pronounced sentences under military law. Military judges served two-year terms. The head of the army appointed the Auditor-General of the armed forces. Military courts were subject to law alone, and rank had no influence on decisions handed down by military courts. The contras had not been tried by military courts, as military penal law had jurisdiction only over members of the armed forces.

59. The powers of the new legislative assembly did not include review of sentences or judgements of people's tribunals, or of ordinary courts. The only matters put before the legislature were review of proposals for pardons.

The meeting rose at 1 p.m.

UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.978
10 April 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 978th MEETING

Held at Headquarters, New York,
on Thursday, 5 April 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Nicaragua (continued)

Organizational and other matters (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

90-55453 2448S (E)

/...

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Nicaragua (CCPR/C/42/Add.8) (continued)

1. At the invitation of the Chairman, Mr. Icaza Gallard and Mr. Quintana García (Nicaragua) took places at the Committee table. Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section VII of the list of issues)

2. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of Nicaragua, dealing with: (a) legal provisions governing the expulsion of aliens and instances in which an appeal against an expulsion order did not have suspensive effect; (b) whether the Amnesty Act of 23 January 1985 had been extended beyond 19 July 1987 and, if so, whether it was still in force; (c) statistical estimates, if available, concerning the number of nationals who had left Nicaragua after 19 July 1979 and the number who had returned since the enactment of Decree No. 1353 of 4 December 1983 and its extensions and Act No. 1 of 23 January 1985 and its extensions (paras. 220 and 221 of the report).

3. Mr. QUINTANA GARCIA (Nicaragua), referring to section VII (a), said that the entry, stay and residence of aliens was governed by the Aliens Act of 5 May 1982 (Decree No. 1032). Under the Migration Act of 4 May 1982 (Decree No. 1031), a residence permit could be revoked or denied, without explanation, for offences against public policy or national security, or for interfering in the country's internal affairs and political matters. The Minister of the Interior could be petitioned to review an expulsion order, and, under article 27 of the Constitution, the remedy of amparo could be invoked before the Supreme Court of Justice if an administrative confirmation of expulsion resulted in injury.

4. Referring to section VII (b), he said that the Amnesty Act of 23 January 1985 had been extended a number of times and had been supplemented recently by the National Reconciliation Act, adopted on 13 March 1990. The Amnesty Act had, in fact, been invoked by contra leaders.

5. Referring to section VII (c), he put the overall number of persons leaving or entering the country at 5,250,000, evenly divided between Nicaraguans and aliens. It was not possible to give an indication of the reasons for such movements. Lastly, a total of 211 people had been granted amnesty between April 1989 and February 1990.

Right to privacy (article 17 of the Covenant) (section VIII of the list of issues)

6. The CHAIRMAN read out section VIII of the list of issues concerning the second periodic report of Nicaragua: with reference to paragraph 272 of the report, he asked whether there had been any complaints of abuse of authority by unlawful entry and, if so, whether such cases had been investigated and action taken to punish offenders and prevent a recurrence of the offence.

7. Mr. QUINTANA GARCIA (Nicaragua) said that, in principle, the home correspondence and communications of all individuals were inviolable under article 26 of the Constitution. Ordinarily, homes could not be entered and searched without a written order from a competent judge, but owing to the special circumstances prevailing in the country, that provision had been suspended. In exceptional cases, the Sandinista Police had searched homes without a warrant and they had been punished in accordance with police regulations.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section IX of the list of issues)

8. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of Nicaragua, requesting: (a) clarification as to whether Decree No. 639 of 1981 applied to churches, sects or denominations as such or only to "associations" or "organizations" and in the latter case, information on the regulations governing the registration, operation and control of religious denominations; (b) information on measures taken to enforce articles 1, 2 and 3 of the General Act on Social Communication Media and its amendments, and on the outcome of prosecutions, if any, of violators; and (c) information as to whether there were any privately owned radio and television stations. If such media were fully owned and controlled by the Government, an account should be given of measures taken to ensure that dissenting opinions were given a fair opportunity to be heard.

9. Mr. QUINTANA GARCIA (Nicaragua), referring to section IX (a), said that, under article 29 of the Constitution, all Nicaraguans were free to decide whether or not to profess a religion. Religious "associations" or "organizations" were regulated by the law of 15 November 1983 (Decree No. 1346) governing associations and central registration of persons. Under Decree No. 313 of 1981, responsibility for the central registration of associations had been transferred from the Ministry of Justice to the Ministry of the Interior. Religious sects and denominations were registered and enjoyed legal personality. Religious associations registered included the Baptist Convention in Nicaragua, the Bible Society of Nicaragua, the Brotherhood of Evangelical Churches and Soldiers of the Cross.

10. Articles 30, 66 and 68 of the Constitution guaranteed Nicaraguans the right to express their opinions freely in public or in private, individually or collectively, in oral, written or any other form. There were 25 private radio stations in the country, but television stations were State-controlled. Under article 30 of the Constitution, dissidents were provided an opportunity to express their opinions by, inter alia, renting air time on State-owned radio, and all opposition parties had had access to radio and television airtime during the recent election campaign. Both the Mass Media Act and Decree No. 511 restricting information which dealt with internal security matters and national defence had been superseded by Act No. 78 of 8 March 1990.

11. Mrs. HIGGINS, referring to paragraphs 279 to 284 of the report, said that it was her understanding that the legal personality of religious associations could be revoked without recourse to the courts. In that case, it would be important to know who decided whether a religious association jeopardized the security or interests of the State, no longer served the purpose for which it had been created or seriously impeded control and supervision by the Ministry of Justice (para. 283): it seemed that that decision might rest with the very authorities competent to impose penalties.

12. Mr. NDIAYE, referring to paragraph 297 of the report, asked whether registration was indeed the sole requirement for establishing a radio or television station or founding a newspaper. According to reports by non-governmental organizations, the press, particularly the daily newspaper La Prensa had frequently been censored in Nicaragua. Those reports should be explained, with an indication as to whether offences against State security were systematically invoked as the reason for censorship.

13. Mr. DIMITRIJEVIC commended Nicaragua's second periodic report for taking full account of the Committee's comments on the initial report. Certain provisions of the General Act on Social Communication Media (para. 296) and its amendments touched on areas which past experience in other countries had shown to be very sensitive. With regard to article 1 (c) of that Act, he would appreciate more details on the persons, acting on behalf of society, to whom the media were responsible; the groups which must be portrayed faithfully; and the common aims of the community. There did not seem to be any sound legal basis for certain other provisions, such as article 2 (b), which referred to "defending the gains of the Revolution", and article 3 (g) prohibiting slurs on the Nicaraguan nation. He wondered whether such provisions were intended to serve merely as guidelines, particularly in the light of article 8 which established "criminal responsibility". The reporting State should clarify whether persons in the media were held criminally responsible under the provisions of the General Act on Social Communication Media, or under some other, separate Act. It would also be interesting to know whether the General Act stipulated the banning of newspapers and books as a penalty, particularly in the light of the press censorship mentioned earlier. He would welcome information as to whether Nicaragua had an independent code of ethics in journalism; that was something which, in other countries, had proved to be a very effective regulatory device without involving the Government.

14. Mr. WAKO, referring to paragraph 292 of the report, asked why the number of Catholic clergy had decreased so radically between 1979 and 1986, when there had been a rise in the number of parishes, congregations and seminaries. Turning to paragraph 294, it would be useful to know whether religion was taught in non-denominational schools and, if so, who decided the syllabus. He would appreciate more information on article 21 (d) of the Statute on the Rights and Guarantees of Nicaraguans (para. 295), which appeared to be contrary to article 18 of the Covenant.

15. Mr. AGUILAR URBINA said that he shared Mr. Wako's concern about the decrease in the number of clergy. It would be useful to know what was meant by the legislation on building new churches (para. 290), i.e., whether it regulated construction details or could actually restrict new building.

16. Mr. QUINTANA GARCIA (Nicaragua), replying to Mrs. Higgins, said that the powers of the Ministry of Justice to grant legal personality had been transferred to the Ministry of the Interior under Decree No. 78 of 8 March 1990. In instances where national security might be endangered, the power to confer or revoke legal personality rested with the National Assembly, pursuant to article 138 (5) of the Constitution.

17. Replying to Mr. Ndiaye, he said that censorship under the Mass Media Act, which had been in effect until March 1990, had not been imposed to any great extent. In a few instances, selected media had been shut down for the minimum time stipulated.

18. Replying to Mr. Dimitrijević, he said that Nicaragua had no independent code of ethics in journalism. Under the earlier Provisional General Act on the Communications Media, the Directorate for the Media had imposed censorship to a limited degree in instances where the media had incited violence or undermined national security.

19. The Mass Media Act of April 1989 had not affected freedom of expression or freedom of the press. In order to allay any fears that it might be used in a repressive manner during the election campaign, however, control of the media had been transferred to the Supreme Electoral Council. The Mass Media Act had been adopted in order to lay the groundwork for the elections and had been widely discussed by journalists and in the National Assembly. It established that the right to inform was a social duty and could not be subject to censorship. Indeed, it provided for legal remedies in instances where the rights of the media were violated. During the election campaign, opposition parties had strongly criticized the Act as repressive, but the finding of international observers had been that it guaranteed the fundamental principles of freedom of the press and information. After the elections, the Act had been repealed and the only media controls now in existence were those stipulated in Nicaraguan penal legislation which, inter alia, provided for remedies in cases of slander.

20. Mr. ICAZA GALLARD (Nicaragua) said that there was no persecution of religious groups in Nicaragua. Priests had supported the Sandinista movement and were represented in the Government. The problems of religious groups were due to war conditions rather than persecution. There were more than 130 civil and religious associations registered with and approved by the Department of Associations. There was complete freedom to provide religious instruction in private and public schools and colleges. Most private schools were in fact run by priests and they were heavily subsidized by the Government. The teaching of religion was an essential part of their curriculum. Religious schools were run by Moravians and other denominations in addition to Catholics. The Ministry of Education authorized compulsory religious instruction in such institutions through approval of the curriculum.

21. Mr. NDIAYE asked for clarification of article 37 (f) in paragraph 298 of the report, noting that television programming costs could vary considerably. How did the Electoral Act ensure equality between the political parties in that regard?

22. Mr. ICAZA GALLARD (Nicaragua) said that the 1984 Electoral Act referred to in paragraph 298 had been amended in 1989 to meet political parties' demands for greater equality, with a view to ensuring that the 25 February 1990 elections were honest and fair and attracted maximum participation. The Supreme Electoral Council had implemented the Act in such a way as to maximize parties' access to the media. One television channel had given free television spots to all the political parties and another had provided full coverage of the campaign. The Electoral Act, as amended, had been an innovation, since it had allowed foreign Governments to fund political parties, something which was unheard of in most countries. UNO's campaign had been financed by the United States, with half the money going to a Fund for Democracy and for civic education, and independent political parties had even complained that UNO had enjoyed an unfair advantage. The Supreme Electoral Council included members of the ruling party and of the opposition and one non-party member.

Freedom of assembly and association (articles 21 and 22 of the Covenant) (section X of the list of issues)

23. The CHAIRMAN read out section XII of the list of issues concerning the second periodic report of Nicaragua, namely: what were the main new provisions governing associations as contained in Decree No. 1346 and had the Decree entered into force?

24. Mr. QUINTANA GARCIA (Nicaragua) said that there were no new provisions governing associations. Decree No. 1346 was still in force and under it more than 130 civil and secular associations had been created.

25. Mr. WENNERGREN asked whether public officials and civil servants could form trade unions and what the consequences of the forthcoming new labour code would be, particularly in connection with the rules of the International Labour Organisation (ILO).

26. Mr. POCAR drew attention to paragraph 308 of the report and asked what rules applied to non-political demonstrations.

27. Mr. QUINTANA GARCIA (Nicaragua) said that the new labour code that was under discussion was designed to guarantee compliance with ILO rules. Unions of public officials and civil servants did exist. Public demonstrations were regulated by the Sandinista Police, operating in accordance with police regulations. In order to preserve law and order, permits to demonstrate were required.

Protection of family and children (articles 23 and 24 of the Covenant) (section XI of the list of issues)

28. The CHAIRMAN read out section XI of the list of issues concerning the second periodic report of Nicaragua, requesting information on law and practice regarding the employment of minors.

29. Mr. QUINTANA GARCIA (Nicaragua) said that the employment of minors was covered by Title IV, chapter IV of the Constitution and by Decree No. 1065. Article 84 of the Constitution prohibited child labour, and child development programmes were in place.

Right to participate in the conduct of public affairs (article 25 of the Covenant) (section XII of the list of issues)

30. The CHAIRMAN read out section XII of the list of issues concerning the second periodic report of Nicaragua, namely: how was equitable access to public service for members of ethnic, religious or linguistic minorities and of the various political parties ensured?

31. Mr. ICAZA GALLARD (Nicaragua) said that those issues were covered by the recent Civil Service Act, which banned discrimination on grounds of sex, religion or political opinions. The purpose of the Act was to guarantee political pluralism among State employees. The Act contained very precise language concerning discrimination on ethnic, linguistic or religious grounds. The media were used effectively to protect linguistic rights and minorities could discuss their problems in the National Assembly in accordance with the Statute of Autonomy.

32. Mr. AGUILAR URBINA asked what measures were planned to ensure the equal representation of minority parties in elections.

33. Mr. MAVROMMATIS drew attention to article 63 of the Electoral Act cited in paragraph 378 of the report and noted that certain members of the armed forces occupied senior positions in the Government. It appeared that members of the armed forces could in fact belong to political parties and participate in political life. Was that so? He also wished to know what distinction was made between political and civil rights and for how long a period and through what process political rights could be forfeited.

34. Mr. QUINTANA GARCIA (Nicaragua) said that elections were based on proportional representation and that there was complete freedom to form political parties. Ten parties and coalitions had participated in the recent elections, some having won only one seat in the National Assembly. Members of the armed forces could be elected to public office, but they must first renounce their military office. They could participate fully in the political life of the country to the extent compatible with their former military activities.

(Mr. Quintana Garcia, Nicaragua)

35. Offences against public policy resulted in the suspension of political and civil rights, which took place after a person had been found guilty and sentenced. Special procedures applied for certain government officials such as members of the Supreme Court of Justice and the President and Ministers of the Republic, who enjoyed immunity from prosecution. Under those procedures, the National Assembly dealt with complaints against such officials who, if found guilty, lost their immunity. Under Nicaraguan law, members of the National Assembly against whom accusations had been made were removed from office before being tried in the ordinary courts.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIII of the list of issues)

36. The CHAIRMAN read out section XIII of the list of issues concerning the second periodic report of Nicaragua, requesting comments on the main changes introduced by the Statute of Autonomy for the Atlantic coast region, in addition to the creation of two autonomous regions, and on the experience thus far with the implementation of the Statute.

37. Mr. QUINTANA GARCIA (Nicaragua) said that under in the Statute of Autonomy for the Atlantic coast region, there had been changes in the procedures for electing political and administrative authorities in the two autonomous regions created by the Statute. Those procedures guaranteed respect for the traditions of the regions' ethnic groups, in conformity with the Constitution and the Electoral Act. Economic projects in the areas of fishing, air transport, education and farming, as well as programmes for disseminating information in native languages in the press and on radio and television, had been introduced. The exploitation of mining, fisheries and other resources had also been promoted in order to protect the rights of minorities, consolidate the country's political and administrative structure and ensure that there was no discrimination between the Atlantic coast region and the Pacific coast region.

38. Efforts had been made to ensure that minorities participated fully in the 25 February 1990 elections. Information had been printed in native languages about the location of polling places and the right of citizens to vote for the party of their choice. Electoral procedures had been explained in the native languages so that minorities could exercise their rights on the same footing as all other citizens.

39. Mr. MYULLERSON asked how the minorities in the Atlantic coast region had voted in the 25 February 1990 elections.

40. Mr. QUINTANA GARCIA (Nicaragua) said that UNO had won in most of the minority constituencies in the Atlantic coast region. The Yatama indigenous association had obtained a seat in the National Assembly because it had not run as a political party in the Atlantic coast region but as an association. Some Sandinista candidates had also been elected in the region.

41. Mr. PRADO VALLEJO commended the members of the Nicaraguan delegation for their detailed replies. He was pleased that, in spite of its serious domestic problems, Nicaragua had managed to submit its second periodic report. He hoped that the Nicaraguan delegation had taken note of the Committee's concerns regarding the situation of human rights in Nicaragua. As a Latin American, he was proud that Nicaragua had conducted free and democratic elections, and he hoped that it would continue to consolidate the democratic process and improve its human rights situation.

42. Mr. EL-SHAFEI said that the second periodic report of Nicaragua was comprehensive and covered all aspects of human rights issues which came under the purview of the Committee. Although it had been faced with domestic turmoil over the past 10 years, the Government of Nicaragua had endeavoured to guarantee respect for human rights to the fullest extent possible. He particularly commended the adoption of the 1987 Constitution. While the Committee had expressed concern at excesses committed by the armed forces and the police, such violations of human rights did not seem to have been widespread.

43. Mr. AGUILAR URBINA said that Nicaragua had submitted an exemplary report and had demonstrated its Government's eagerness to fulfil its obligations under the Covenant.

44. The 1987 Constitution seemed to confer excessive powers on the executive branch; in particular, the President had the right to enact emergency decrees which had the force of constitutional law and were not subject to legislative or judicial limitations. He was concerned at the power of the police to sentence individuals for up to six months without the right to be brought before a judge. However, those issues could be dealt with in Nicaragua's next report.

45. As a Central American, he felt proud that, on 25 April 1990, for the first time in the history of Nicaragua, an opposition leader would take office as President, by peaceful means.

46. Mr. FODOR said that, while human rights violations had undoubtedly taken place in Nicaragua during the reporting period, the Committee had to take account of the exceptionally difficult domestic situation in that country. Nevertheless, he was concerned at the Government's suspension of a number of rights during several very long states of emergencies and at the broad judicial powers of the police. Abuses by the military, including arbitrary detention, unauthorized searches of homes, and torture, were particularly alarming. The broad scope of the recent Amnesty Act might be detrimental to certain rights of individuals who had been the victims of earlier violations.

47. The 1987 Constitution was a progressive document which could serve as the basis for guaranteeing effective implementation of the rights protected by the Covenant. The free and internationally monitored elections in February 1990 had been very encouraging. He commended the progressive system for the rehabilitation of prisoners, as well as the repeal or amendment of legislation governing the maintenance of law and order and national security. He was pleased that Nicaragua allowed humanitarian bodies to monitor the human rights situation in the country, and that the number of political prisoners had decreased radically.

48. Mr. WENNERGREN thanked the delegation of Nicaragua for its very informative replies to the questions asked by members of the Committee. He had been impressed by the many positive developments in Nicaraguan legislation. However, he was still unable to determine whether Nicaraguan law regarding preventive and pre-trial detention was in keeping with article 9 of the Covenant. He hoped that Nicaragua would consider that matter in its future efforts to amend its legislation.

49. He had serious concerns regarding the scope and application of the recent Amnesty Act. Amnesty International had informed the Committee that 17 military and police officers had been tried by military courts on charges of homicide or brutal murder and had received sentences ranging from six years to the maximum of 30 years. Those were serious violations, and he hoped that the Amnesty Act would not apply to persons who had committed such gross violations of human rights.

50. Mr. MYULLERSON, observing that the Nicaraguan report was very comprehensive and gave a good picture of the legal system in the country and of the place of human rights within that system, said that though the difficulties under which the Government had laboured in the past had forced it to set limitations on human rights and at times to violate them, he trusted that it would henceforth strike a proper balance between freedom and social justice. Nicaragua had shown great respect for international law and for United Nations legal machinery, and its Government and people had set an example by their participation in the Central American peace process and by their recent free and fair elections.

51. Mr. POCAR observed that the Nicaraguan representatives had answered all the questions most co-operatively, on the basis of an excellent, if outdated, report.

52. He nevertheless wished to stress two particular concerns. First, the restrictions on human rights permissible under the Nicaraguan system at times depended more on the discretion of the administrative authorities than on the law itself, although probably that was a matter of bringing Nicaragua's legislation into line with its Constitution. Secondly, the 1990 Amnesty Act remained worrisome, especially with regard to its scope and the possibilities it afforded for victims to obtain compensation.

53. It should not be forgotten, of course, that in the past 10 years Nicaragua had had to emerge from decades of dictatorship and at the same time confront enormous internal and external difficulties. The recent elections had now made it a State based fully on the rule of law.

54. Mr. MAVROMMATIS said that his faith in the Nicaraguan people had been vindicated when a democratic régime had agreed to hand over the reins of power following free and fair elections. That, to his mind, wiped the slate clean of nearly all the human rights violations that had been committed under provocation and extremely difficult circumstances. He himself saw the recent amnesty as a good thing, so long as adequate compensation was made to victims.

55. Mrs. HIGGINS observed that it was one thing to say that the international and internal situation caused problems for the observance of human rights, and another to judge whether such circumstances justified, in terms of the Covenant, the legal and de facto system under which the Nicaraguan people had lived since the previous report. It was not for the Committee to wipe any slates clean. Its task was to understand the objective need for particular measures restricting human rights. It seemed to her that the dialogue in the Committee had ignored the fact that there had been derogations from a whole range of rights in Nicaragua for significant periods of time. She was forced to say that her own very specific questions about why derogations from certain articles of the Constitution had occurred, and how those derogations related to the difficult internal and external situation, had not been answered at all.

56. The Nicaraguan delegation had also not addressed the aspects that she had found troubling about the revocation of the legal personality of associations, nor her questions about the mass media. There had been a reference to the media inciting violence but, having seen the list of reasons given for closing down La Prensa, for instance, she knew that it had only rarely been closed down for reasons of national security under article 3 of the Mass Media Act. The usual reason had been its unacceptability to the Government, under articles 1 and 2 of the Act. She was also aware that independent radio news broadcasting had been prohibited for long periods of time and replaced by obligatory government news broadcasting.

57. She was still concerned about compliance with article 9 (3) of the Covenant, since the period of pre-trial detention as explained to the Committee was incompatible with it. She was anxious, too, about police powers. While welcoming the revisions in police regulations, she noted that police punishment powers of up to six months remained. She was not reassured by the provision in Decree No. 559 that lawyers could not obstruct investigations, which must surely act as a disincentive to obtaining legal assistance. She was also somewhat concerned about the measures taken to ensure the independence of the judiciary. No nation could count on having at all times judges whose ability was matched only by their integrity; there must be external guarantees.

58. At the same time, there had been a number of encouraging developments. The recent legislative review had led to the repeal of some unsatisfactory provisions and had provided a legal basis for pluralism. The recent Amparo Act, the abolition of the Anti-Somoza People's Tribunals, the adoption of the 1987 Constitution and, above all, the exemplary conduct of the recent elections and the smooth transfer of power to the new Government were all excellent developments.

59. The report was extremely good and the Nicaraguan delegation had given an honourable accounting of its Government's stewardship.

60. Mr. WAKO said that the excellent report had not confined itself to citing legal provisions but had given statistics reflecting how the Covenant was actually being implemented in the country, and had clearly set out the very grave economic difficulties and military aggression that had impeded its implementation. He was proud that a third world country had been able to produce such a good report.

(Mr. Wako)

61. He agreed with the points raised by Mr. Prado Vallejo, Mr. Fodor, Mr. Wennergren and Mrs. Higgins. He himself was particularly concerned about the whole area of the administration of justice: the role and powers of the police and the independence, security of tenure and methods of selection or appointment of judges. He hoped that the recent elections would usher in a period of peace in Nicaragua, and looked forward to hearing in the next report how human rights had been implemented in the intervening years.

62. Mr. COORAY commended the Nicaraguan delegation for a very constructive dialogue with the Committee on such issues as the relationship of the Covenant to the Nicaraguan Constitution, the legal remedies available under Nicaraguan law, the dissemination of information about the Covenant, especially among ethnic minorities, and the independence and security of tenure of the judiciary and of the National Commission for the Promotion and Protection of Human Rights.

63. The CHAIRMAN concurred with the Committee's comments on the excellence of the report and the constructive dialogue with the Nicaraguan delegation, as well as the favourable developments that had resulted from the recent elections that had so impressed the entire world. There was general concern in the Committee regarding the 1990 Amnesty Act and it would be very interesting to hear in the next report how the Act had been applied, especially if the Committee began receiving communications under the Optional Protocol relating to the amnesty.

64. He hoped that points not covered in the second periodic report would be dealt with in the next one. For instance, the Committee would welcome precise information about the provisions of the Code of Criminal Procedure that had become outdated.

65. The existence of an independent judiciary was the corner-stone of any successful human rights policy. Good laws were not enough; they had to be applied and the judicial system must make that possible. The absence of legal criteria for the selection and period of appointment of judges, the lack of any security of tenure, the restriction of judicial immunity to the upper echelons of the judiciary, the extent of the powers of the military courts and the manner of appointment of military judges were all matters of serious concern. He trusted that the Committee would see increasing implementation of the Covenant in Nicaragua.

66. Mr. ICAZA GALLARD (Nicaragua), thanking the Committee for the open and constructive dialogue with his delegation, said that he had been deeply impressed with the seriousness and professionalism of its members.

67. The Nicaraguan revolution of 1979 had set in motion changes based on three fundamental pillars: political pluralism, a mixed economy and non-alignment. He himself would add a fourth, the protection of human rights, which his Government was leaving as a legacy for all Nicaraguans. All political parties, whether in the opposition or not, must agree on that fundamental issue.

(Mr. Icaza Gallard, Nicaragua)

68. His delegation had taken note of the comments both positive and negative, made by the Committee, and assured it that they would be transmitted to the current Government and the incoming Government.

69. The Nicaraguan people had made many sacrifices to achieve peace, which was now at hand. Peace would create optimum conditions for democratic progress and the protection of human rights both in practice and in law.

70. Mr. Icaza Gallard and Mr. Quintana García withdrew.

ORGANIZATIONAL AND OTHER MATTERS (continued)

71. The CHAIRMAN invited the Committee to take decisions on the future membership of its working groups. For the Working Group on Communications, Mr. Dimitrijević, Mr. Ando, Mr. Wako, Mr. Prado Vallejo and Mr. Mavrommatis had been proposed as members, with Mr. Ndiaye and Mr. Cooray as alternates. For the Working Group under Article 40 of the Covenant, Mr. Pocar, Mr. Aguilar Urbina, Mr. Fodor and himself had been proposed as members, with Mr. Ndiaye and Mr. Wennergren as alternates.

72. If he heard no objection, he would take it that the Committee decided to approve those appointments for one year.

73. It was so decided.

74. The CHAIRMAN invited the Committee to appoint a Special Rapporteur for New Communications for the coming year.

75. Mr. WAKO proposed that the appointment of Mrs. Higgins should be renewed for another year.

76. Mr. Aguilar Urbina, Mr. Ndiaye and Mr. Fodor seconded the proposal.

77. Mrs. Higgins was appointed Special Rapporteur for New Communications for the coming year.

The meeting rose at 6 p.m.